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THE
MINOR LAW-BOOKS

TRANSLATED BY
JULIUS JOLLY

PART I
NĀRADA BRIHASPATI

MOTILAL BANARSIDASS
Delhi Varanasi Patna

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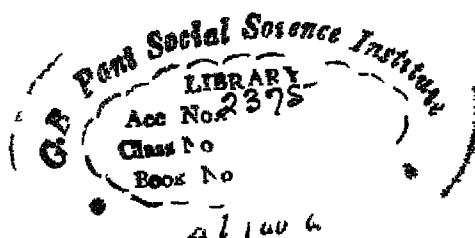
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RASHTRAPATI BHAVAN,
NEW DELHI 4
June 10, 1962

I am very glad to know that the Sacred Books of the East, published years ago by the Clarendon Press, Oxford, which have been out-of-print for a number of years, will now be available to all students of religion and philosophy. The enterprise of the publishers is commendable and I hope the books will be widely read.

S RADHAKRISHNAN

PUBLISHER S NOTE

First, the man distinguished between eternal and perishable. Later he discovered within himself the germ of the Eternal. This discovery was an epoch in the history of the human mind and the *East was the first to discover it*.

To watch in the Sacred Books of the East the dawn of this religious consciousness of man must always remain one of the most inspiring and hallowing sights in the whole history of the world. In order to have a solid foundation for a comparative study of the Religions of the East we must have before all things, complete and thoroughly faithful translation of their Sacred Books in which some of the ancient sayings were preserved because they were so true and so striking that they could not be forgotten. They contained eternal truths expressed for the first time in human language.

With profoundest reverence for Dr S Radhakrishnan, President of India who inspired us for the task, our deep sense of gratitude for Dr C D Deshmukh & Dr D S Kothari for encouraging assistance, esteemed appreciation of UNESCO for the warm endorsement of the cause, and finally with indebtedness to Dr H Rau, Director, Max Muller Bhawan, New Delhi, in procuring us the texts of the Series for reprint, we humbly conclude.



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INTRODUCTION

TO

NÂRADA

THE Nârada *smṛiti* or Nâradiya Dharmasâstra first attracted attention nearly a century ago by being quoted in the Preface to Sir W Jones's celebrated translation of the Code of Manu. What caused it to be brought before the notice of the learned world, was its bearing on the origin and history of the authoritative law book of ancient India. The statements extracted by Sir W Jones from the opening chapter of Nârada's law book require some modification at present as he was not acquainted with the larger and more authentic of the two versions of Nârada's work which is now translated. It appears from the present work (pp 1-4) that Nârada the reputed compiler of the Nâradiya Dharmasâstra refers to four instead of three successive versions of the Code of Manu, in 100 000 slokas or 1,080 chapters in 12 000 8 000 and 4,000 slokas. The authorship of these four versions is assigned respectively, to Manu, Nârada, Markandeya, and Sumati the son of Bhṛgu and the Narada *smṛiti* is described as an abridgment made by Narada of the ninth or Vyavahâra (legal) chapter of the original Code in 100 000 slokas. The first part of Narada's abridgment of the ninth chapter of Manu's Code is designed as a *mâtṛikâ* or vyavahâra *mâtṛikâ* summary of proceedings at law or general rules of procedure.

Though the mythical nature of the Preface to the Nârada-
Explanation of the legend *smṛiti* is sufficiently apparent some facts which recently have come to light impart a higher degree of probability to the alleged connexion between Manu and Nârada than was formerly allowed by myself. Thus the contents of Nârada's Preface to his *Smṛiti* appear

to have been known to such an early author as Medhâtithi who quotes it rather loosely it is true in his Commentary on the Code of Manu where he says that this work consisting of one hundred thousand (ślokaś) was composed by Pragâpatî and abridged successively by Manu and the rest¹ This goes far to prove that the Preface to the Nârada smṛti had attained notoriety as early as the ninth century A D, and must be nearly or quite as old as the remainder of the work. The antiquity of the account given by Nârada of the origin and history of the principal code of ancient India is supported to some extent by the Paurânik statement regarding four successive remodellings of the original composition of Svâyambhuva (Manu) by Bhrîgu Nârada, Brîhaspati, and Angiras² and by a curious tradition preserved in the Mahâbhârata, to the effect that the original Dharmaśâstra produced by Brahman in 100,000 chapters was successively reduced to 10 000 5 000 3,000 and 1 000 chapters by Samkara, Indra, Brîhaspati and Kavya³ What is more in a colophon of the ancient Nepalese MS of the Nârada smṛti that work is actually designed as the Manava Dharmaśâstra in the recension of Nârada (manave dharmasastre nârada-proktâyâm samhitâyâm) just as the Code of Manu in the colophons is usually called the Manava Dharmaśâstra in the recension of Bhrîgu (mânave dharmasastre bhrîgu-proktâyâm samhitâyâm or mânave dharmasastre bhrîgu-prokte) Again the chapter on theft (kaurapratiśedha) which has come to light in Mr Bendall's Nepalese Palm leaf MS of Nârada, and in a Nepalese paper MS recently discovered by the same scholar forms an appendix to the body of the Nârada-smṛti exactly in the same way as an analogous chapter on robbery and other criminal offences is tacked on at the close of the eighteen titles of law in the Code of Manu IX 252-293 It also deserves to be noted perhaps that the Dhamathats of Burma, while professing to be founded

¹ Manuśikāśaṅgraha p 39 gloss on Manu I 58 Buhler Sacred Books of the East, vol. xxv p xv

² Mandlik's Hindu Law p. xlvii

³ Mahâ XII, 59, 12 and 80 foll. Buhler ibid p xcvi

on the laws of Manu contain several rules and maxims which may be traced to the Nârada smṛiti whereas they do not occur in the Code of Manu¹

Although therefore there appears to be an element of truth in Nârada's account of the history of the Code of Manu, and of his own Smṛiti

Manu anterior
to Nârada.

there can be no doubt that the actual position of the two works has been inverted by him. The composition of Bṛiḡu or of Sumati, the son of Bṛiḡu i.e. the now extant Code of Manu is not posterior but decidedly anterior in date to the Nârada smṛiti, as may be gathered easily from a comparison of both works. Thus e.g. Nârada mentions twenty one modes of acquiring property fifteen sorts of slaves fourteen species of impotency three kinds of women twice married and four kinds of wanton women twenty women whom a man must not approach, thirty two divisions of the law of gift eleven sorts of witnesses five or seven ordeals, four or five losers of their suit two kinds of proof and two kinds of documents seven advantages resulting from a just decision, eight members of a lawsuit one hundred and thirty two divisions of the eighteen principal titles of law. The first germs of some of these theories may be traced to the Code of Manu, and it is interesting to note how these germs have been developed by Nârada. As a rule his judicial theories show an infinitely advanced stage of development as compared to Manu's, and his treatment of the law of procedure in particular abounding as it does in technical terms and nice distinctions and exhibiting a decided preference for documentary evidence and written records over oral testimony and verbal procedure exhibits manifest signs of recent composition.

An analogous inference may be drawn from the fact that

Nârada acquainted
with the Code
of Manu.

Nârada was apparently acquainted with a work either identical with or closely allied to the now extant Code of Manu. His

analysis of the contents of the original Code composed by Manu in 100 000 slokas corresponds in the main to the topics

treated in that work as it now stands. He quotes the opening verse of the original gigantic work of Manu and it is a remarkable coincidence that this verse agrees with Manu I 5 6 1 c with the actual exordium of the Code of Manu as vv 1-4 serve as an introduction only and may be a subsequent addition. Forensic law is alleged to have formed the subject of the ninth chapter of the original composition of Manu. In the Code of Manu law and judicature are discussed in the eighth and ninth chapters. The twenty four chapters divided into one thousand and eighty 1 c 45 x 24 sections of the original Code, seem to represent double the twelve chapters of the Code of Manu. On the other hand Sumati the son of Bhṛigu who is alleged to have reduced the original Code of Manu to its present size and to have produced the law-book now current among mankind may be identified with Bhṛigu the supposed author of the actual Manu smṛiti and the number of 4 000 slokas which is assigned to his composition may be taken to be a rough statement of the actual extent of the Manu smṛiti which in reality runs up to 2 68, slokas only.

A consideration of these facts leaves but little doubt that the compiler of the Nārada smṛiti, whoever he was must have been acquainted with a work closely akin to the now extant Manu smṛiti. This is so much the more probable because several of his references to the authoritative enunciations of Manu may be actually traced to the Manu-smṛiti¹ and because a number of verses either occurring in the MSS of the Nārada smṛiti, or attributed to him by the digest writers recur in the Code of Manu.

However though acquainted with the Code of Manu the so called Narada was far from offering a mere slavish reproduction of its doctrines in his own work. On the contrary, the Nārada-smṛiti must be considered as an independent and therefore specially valuable exposition of the whole system of civil and criminal law as taught in the law schools of the period. It is in fact the only Smṛiti completely preserved

Discrepancies
between Manu
and Narada

See e g Appendix 26 (p 227) and Manu VIII 320 Appendix 34 (p 228) and Manu VIII, 334 Appendix 36 37 (p 228) and Manu VIII 124, 125

in MSS, in which law properly so called is treated by itself without any reference to rules of penance diet and other religious subjects and it throws a new and an important light on the political and social institutions of ancient India at the time of its composition. Several of the doctrines propounded by Nārada are decidedly opposed to and cannot be viewed in the light of developments from, the teaching of Manu. Thus e.g. Nārada advocates the practice of Niyoga or appointment of a widow to raise offspring to her deceased husband. he declares gambling to be a lawful amusement when carried on in public gaming houses. he allows the remarriage of widows. he virtually abrogates the right of primogeniture by declaring that even the youngest son may undertake the management of the family property if specially qualified for the task. he ordains that in a partition of the family property the father may reserve two shares for himself and that in the case of a partition after his death the mother shall divide equally with the sons and an unmarried sister take the same share as a younger son, he lays down a different gradation of fines from those laid down by Manu &c.¹

It may be argued that Nārada would not have ventured
 Their probable origin to differ from the Code of Manu on such essential points as these unless he had found good authority for doing so in other early works or dicta attributed to the primeval legislator of India and that this fact furnishes another reason for attaching some credit to what Nārada relates of the original Code in 100 000 verses and of its successive abridgment. Thus much is certain that a great many floating proverbs and authoritative enunciations of Manu and of Vṛiddha or Brīhan Manu must have existed by the side of the Code of Manu in the times of Nārada as well as before and after his period when they were quoted in the Mahābhārata² and in the Com

¹ See the foot notes passim.

See Nārada XII 80 88 and Manu IX 65-68 Nārada XVII, 1-8 and Manu IX 221-228 Nārada XII, 97 and Manu V 162 Nārada XIII 5 and Manu IX 105-109 Nārada XIII 13 14 and Manu IX 104, 131 Nārada, Appendix 30 3 and Manu VIII 38

mentaries and Dharmanibandhas from Medhātithi's Manu bhashya down to Gagannātha's Digest translated by Colebrooke. The compiler of the Nārada smṛiti may have incorporated a number of these dicta in his own composition. At the same time, it is far from improbable that a work on law called the Code of Manu in the version of Nārada may have existed by the side of the celebrated Code of Manu in the version of Bhṛigu and that the unknown compiler of the Narada smṛiti may have utilised that work for his own composition, and enhanced the value and authority of the latter by referring to and arranging in his own way the reports current with regard to Manu and Narada. The precise nature of the origin of such a work as the Narada smṛiti must needs remain a matter for speculation, but it certainly was an established practice with Sanskrit writers to graft their own compositions on earlier works attributed to fabulous personages of the heroic age of India and indeed to fabricate an authority of this kind for the productions of their own pen.

The probable date of the Code of Manu may be turned to account for determining the date of the Nārada smṛiti, just as the presumable date of the latter work has been used in its turn for fixing the chronological position of Manu. The composition of the two works is separated apparently, by a considerable interval of time. If therefore, the date of Manu has been rightly placed between the second centuries B.C. and A.D. by Professor Buhler¹ it would seem to follow that the Narada smṛiti can hardly belong to an earlier period than the fourth or fifth century A.D. The same conclusion may be arrived at by other, and independent considerations.

Thus the Narada smṛiti agrees on many important points especially in the law of evidence compared with other Smṛitis with the Dharmasāstras or Smṛitis of Yāgyavalkya Viṣṇu Bṛhaspati, Kātyāyana and Vyāsa. It may be a little older than the three last named works.

which belong to the latest productions of the *Smṛiti* epoch of Hindu Law, but its legal rules and judicial theories have a decidedly more advanced character than either *Vishṇu* s or *Yāgñavalkya* s. The *Smṛiti* of *Vishṇu* cannot belong to an earlier period than the third century A D ¹, and the *Yāgñavalkya Smṛiti* is not likely to be anterior to it in date ².

Again the judicial trial which is described in the well known drama *Mṛikāhakatika* corresponds in all essential features to the rules laid down in *Nārada* s chapter on 'The Complaint' ³. If then the *Nāradiya Dharmaśāstra* and the *Mṛikāhakatika* are contemporaneous productions we have a further reason for assigning the composition of the former work to the fifth or sixth century A D. It may also be noted that *Nārada* (XII 74) regards sexual intercourse with a female ascetic *pravratitā* as a kind of incest. In the earlier Indian dramas likewise such as *Kālidāsa* s *Malavikāgnimitra* and *Sūdraka* s *Mṛikāhakatika* the position of nuns and monks is highly dignified.

Last not least the European term *Dināra* i. e. *denarius* or *δηνάριον*, which is so important for the purposes of Indian chronology occurs repeatedly in the *Nārada smṛiti*. In the first passage (Intro II 34, p 32) *Dīnāras* are mentioned among other objects made of gold and it would seem that a gold coin used as an ornament is meant, such as e. g. the necklaces made of gold mohurs, which are being worn in India at the present day. 'A string of *Dīnāras* (*dināra malaya*) used as a necklace occurs in a well known Jain work the *Kalpa sūtra* of *Bhadrabahu* ⁴. It is however possible that the *Dīnāras* or other golden things may be gold coins simply, and that *Nārada* means to refer to forged or otherwise counterfeit coins. The second passage (Appendix v 60 p 232) is specially valuable because it contains an exact

Sacred Books of the East vol. vii, p. xxxii

² Tagore Law Lectures p. 49

³ See particularly p. 27 note on 18

See Dr. Jacob's edition par. 36 (p. 44) and the same scholar's translation of the *Kalpa sūtra* Sacred Books of the East, vol. xxn, p. 232

statement of the value of a Dīnāra which, it says is called a Suvāna also. The reception of Dīnāras among the ordinary coins of that period shows that their circulation in India must have commenced some time before the Nārada-smṛiti was written. The first importation of gold Dīnāras into India cannot be referred to an earlier period than the time of the Roman emperors and the gold Dīnāras most numerous found in India belong to the third century A D.¹

The earliest reference to a work called Naradīya References to Nārada. Dharmasāstra seems to be contained in a work of the sixth century Bāṇa's Kadambarī². Whether the compiler of the Pañjikatantra was acquainted with the Nārada-smṛiti appears to be doubtful. The Pañjikatantra in Kosegarten's edition contains a legal text which is attributed to Nārada though it is not to be found in the Nārada-smṛiti. The standard Bombay edition of the Pañjikatantra has that very text but the name of Narada is omitted.³ Medhātithi's Manubhashya, which seems to belong to the ninth century contains several references to the Nārada-smṛiti, and Asahāya who appears to have preceded Medhātithi is the reputed author of the ancient Commentary on it which has largely been used for the present work.⁴

These considerations tend to show that the composition of the Nārada-smṛiti cannot be referred to a more recent period than the fifth century A D or the sixth century at the very latest. Nor can it belong to a much earlier age than that. This estimate of its age agrees with the results arrived at, thirteen years ago from the very scanty data then available.

¹ Bühler S. B. E. vol. xxv p. cvii. West and Bühler p. 48. Max Müller History of Ancient Sanskrit Literature p. 245. Jolly Tagore Law Lectures p. 36. Hornle Proceedings of the Seventh Congress of Orientalists p. 134.

² P. 91 in Peterson's edition. See Bühler Sacred Books of the East vol. xxv p. cvii note 1.

³ See Kosegarten's Pañjikatantra III. 94. Bombay ed. III. 2. It is true that the two texts immediately preceding the text in question in the Pañjikatantra may be compared with Nārada XI. 2 and I. 5. 79.

⁴ The fact that Asahāya refers to a coin called dramma, i. e. the Greek δραχμή may be used for fixing the earlier limit of his date.

The present translation unlike the Institutes of Nârada previously published by myself (London Trubner & Co 1876), is based in the main on what may be termed the large version of Nârada and accords throughout with the editio princeps of the Narada smṛiti in the Bibliotheca Indica. The reasons which have induced me to consider the large version as the original and authentic composition of Nârada and to make it the basis of my edition of the Sanskrit text in the Bibliotheca Indica have been stated in my volume of Tagore Law Lectures pp 54-56. In those parts of the work also where both versions agree or where the only extant MS of the large version is deficient and has to be supplied from the MSS of the minor version the present translation will be found to differ not inconsiderably from my previous rendering of the Institutes of Narada. The discovery of five valuable MSS of the minor version besides the three used in preparing the 'Institutes of Nârada' the recovery of Asahâya's ancient and valuable Commentary on the Nârada smṛiti and the dies diem docet have united to produce a considerable number of new results. Among the new MSS discovered the fifteenth-century Nepalese Palm leaf MS of Mr Bendall is the most important and has furnished an entire new chapter the authenticity of which is proved by numerous references in the mediaeval and modern Digests of Law. The chapter in question has been termed an Appendix in the present work (pp 223-232). It is found likewise in a Nepalese paper MS of the minor version discovered very recently by Mr Bendall among the Nepalese MSS of the British Museum where it had been labelled wrongly as Kaurapratisheḍha.

The Commentary of Asahaya as far as it goes has furnished the substance of the foot notes to the present translation in which it has been quoted constantly as A. Asahâya was a standard writer in the province of Hindu Law and his Nâradabhâṣya is a very valuable production indeed. He shares with other early commentators of law books the peculiarity of indulging every now and then in 11 ons

taken from the every-day life of his period which help to throw some light on the practical working of Indian Law in those times. As an instance of this tendency I would cite his remarks on a rule concerning liability for debts (pp 43 44). Of course it would be dangerous to trust his philological skill everywhere and some of his interpretations are decidedly artificial. What is worse, the Commentary of Asahaya has not been preserved in its original shape but in a recast due to one Kalyāṇabhaṭṭa, whose name is entirely unknown to fame. It is just possible that Kalyāṇabhaṭṭa instead of confining his activity to supplying deficiencies and correcting mistakes in the copies of Asahāya's Commentary may have inserted some new verses in the text of the Nārada smṛiti as well. Such might be conjectured for example to be the origin of the four verses, Introd I 21-24 (pp 9-13) which are quoted in none of the authoritative Digests and objectionable as to grammar and metre. It should be remembered however that Kalyāṇabhaṭṭa declares the original work of Asahaya to have been spoiled by negligent scribes and so the grammatical blunders may be charged to their account.

The latter half of Asahāya's Commentary being lost I had to avail myself for the corresponding portion of the

Other auxiliary
writings Nārada smṛiti of the glosses of other mediaeval writers by whom the texts of Nārada have been quoted and discussed a great deal. Their

opinions have been adverted to very fully, in the chapter on inheritance especially both on account of the practical importance of inheritance for the law courts of modern India and because each of the various schools of Sanskrit lawyers has been anxious to interpret the sayings of Nārada to its own advantage. For the curious and somewhat obscure disquisition on fourteen kinds of impotency (XII, 11-18, pp 167-169) I have been able to use the advice of my late lamented friend Dr Haas, the well known student of Indian medical science. A somewhat analogous passage in the canonical literature of the Buddhists has been kindly pointed out to me by Mr Rhys Davids¹

The sign of an asterisk (*) has been prefixed to those texts of Nārada which were found to be

Nārada's repnte
as a legal writer

quoted in one or several of the Sanskrit

Commentaries or Digests of Law. The same method has been observed previously in the Bibliotheca Indica edition of the Sanskrit text but a considerable number of quotations has come to light since then. The repnte of Nārada as a legal writer appears to have been so great that upwards of half his work has been embodied in the authoritative compositions of the mediaeval and modern writers in the province of Sanskrit law.

Under the heading of Quotations from Nārada, all those texts have been collected at the close of the present transla-

Quotations from
Nārada

tion which are attributed to Nārada in one or several of the Digests and Commentaries

without being traceable in the MSS. of the Nārada smṛiti. Between these quotations have been inserted for the sake of completeness and in order to fill up the gaps between the single texts contained in the quotations a number of unpublished texts from the MSS. of the minor version, and from the final chapter on Ordeals in the ancient Nepalese MS. of the Nārada smṛiti¹. A complete edition of that chapter will I trust be published by Dr. A. Conrady. The quotations have been taken from all the principal Sanskrit works on law from Medhātithi's Manubhāṣya downwards. For a detailed statement of the particular work and chapter from which each text has been quoted I may refer to the foot notes. Most texts being quoted in more than one work at a time it has not been thought necessary to give complete references to every such work in each particular case but I have made a point of referring as much as possible to those law books which exist in English both for convenience of reference and in order to facilitate a comparison of the present translation with previous renderings of the texts of Nārada. All the unpublished texts have been given in the foot notes in the original Sanskrit together with the names of the works from which they have been taken. The MSS.

of these works were obtained principally from the India Office and Deccan College libraries, for some of them I was able to use copies of my own. A peculiar source of difficulties lies in the fact that these works differ considerably as to the names of the authors of the single texts. Many texts were no doubt proverbial sayings and appropriated therefore by several writers. In other cases the mutually conflicting statements of various writers regarding the authorship of the texts may be attributed to carelessness. Grammatical blunders and faulty readings as well as the *varietas lectionis* have been referred to in important cases only. I subjoin a list of the abbreviations used in the foot notes to the present translation.

ABBREVIATIONS

- Apararka=Aparārka's Commentary on the Yāgyavalkya smṛiti
Deccan College MS
- Āpastamba, see Manu
- Baudhāyana see Manu
- Col Dig =Colebrooke's Digest of Hindu Law (translation of
Gagannātha's work)
- Dāyabhāga=Colebrooke's translation of the Dāyabhāga on Inheri-
tance or the Sanskrit text of the D in the Calcutta edition of
1829
- Dayakṛmasangraha=Wynch's translation in Stokes's Hindu Law
Books or the Calcutta edition
- Gagannātha=Gagannātha's Vivādabhangamava (the work trans-
lated by Colebrooke) Bengali MS in my possession
- Gautama, see Manu
- { M or Mitākshara=Mitaksharâ the Calcutta edition of the Vya-
vahâradhyaya or Colebrooke's version of the Mitaksharâ on
Inheritance
- { M Macn =Macnaghten's translation of the Mitaksharâ on Ad-
ministration of Justice
- Manu=the Code of Manu ed Jolly London 1887 or Professor
Buhler's translation of the same For the principal editions and
translations of Āpastamba Baudhāyana and the other old law
books I may refer to my volume of Tagore Law Lectures
- May =Mandlik's translation of the Vyavahara Mayūkha, in his
Hindu Law Bombay 1880
- May (text)=Mandlik's edition of the same ibid.
- Mayukha=the same work
- Minor Nârada=The Institutes of Nârada transd by J Jolly London
1876, or the unpublished Sanskrit original of the same work
- Narada=the present translation
- Nârada smṛiti=The Institutes of Nârada edited by J Jolly in
the Bibliotheca Indica series
- Nepalese Narada=Mr Bendall's Nepalese Palm leaf MS of Nârada
- Raghunandana=Raghunandana's Vyavahâratattva, the Calcutta
edition.
- Ratn Vivâda Ratnâkara in the Bibliotheca Indica.

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- Smṛitī* = Devanabhaṭṭa's *Smṛitīkandrikā* India Office MS
Smṛitīkandrikā = the same or the chapter on Inheritance transl
 by Iyer
Tod or *Todarānanda* = Vyavahārasaukhya in *Todar Mall*'s *Todarā*
nanda Deccan College MS
 (Uncertain) = texts quoted as *Smṛiti* generally without the name
 of the author being given.
Vasishṭha see *Manu*.
Vīram = *Vīramitrodaya* in Jībananda Vidyāsāgara's edition
Vishṇu see *Manu*
Viv = *Vivādaśūntāmaṃ* translated by Tagore Calcutta 1863
Vivādaśūntāmaṃ = the Sanskrit text, Calcutta edition of 1837
V T = *Vivādatāṇḍava* by Kamalakara, India Office MS
Vy K = *Vyavahāraśūntāmaṃ* by Vākaspati-misra, Devanāgarī MS
 in my possession
Yāgyavalkya, see *Manu*
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N Â R A D A

THE AUTHORS PREFACE

I HOLY MANU, in order to promote the welfare of all beings composed a book here, which was to become the foundation of the established rule of conduct. It was made up of twenty four sections, on (1) the creation of the world, (2) the various kinds of living beings, (3) the extent of the virtuous

1 Regarding the historical value and bearing of this Preface, see Introduction. The table of contents which is here given for the original Code of Manu, corresponds in the main to the contents of the now extant version of that work. Thus the creation of the world is treated of Manu I 5-57 the various kinds of living beings I, 34-50, the virtuous countries II 17-23 the constitution of a judicial assembly XII 108-114 the performance of offerings III 69-286 IV 21-28 &c, established usage (Âkâra) *passim*, all the multifarious rules of private morals and social economy falling under this head, forensic law chapters VIII and IX, the extirpation of offenders IX 252-293 the mode of life of a king chapter VII, the system of the four castes and four orders, I, 87-101 IX 325-336 &c marriage laws III 1-62 the mutual relations between husband and wife IX 1-103 the order of succession IX 103-220 the performance of obsequies III 122-286 rules of purification V, 57-146 rules of diet V, 1-56, saleable commodities and those which may not be sold, X 85-94 the classification of offences XI, 55-71 the twenty one bells, IV, 88-90, penances, XI, 72-266. The Upanishads are frequently referred to e.g. II 165, VI 29. Secret or mysterious doctrines are e.g. those taught in the twelfth chapter of the Code of Manu. A somewhat analogous table of contents of the Code of Manu is given in that work itself, I 111-118.

country, (4) the constitution of a judicial assembly (5) the performance of offerings according to the Vedas and Vedāṅgas, (6) established usage, (7) forensic law (8) the extirpation of offenders (9) the mode of life of a king (10 11) the system of the (four) castes and (four) orders (12) marriage laws, (13) the mutual relations between husband and wife, (14) the order of succession (15) the performance of obsequies (16) the elucidation of difficult points regarding purification (17) the rule as to what may be eaten and what not, (18 19) the law regarding vendible commodities and those which must not be sold, (20) the various kinds of crime (21) heaven and hell (22) penances, (23) the Upanishads (24) secret doctrines

2 Holy Manu after having thus (composed) that (book) in a hundred thousand ślokas, and in one thousand and eighty chapters delivered it to the divine sage Narada. He having learnt it from him reflecting that a work of this kind could not be remembered easily by mortals on account of its size abridged it in twelve thousand (ślokas) and delivered it to the great sage Mārkaṇḍeya.

3 He having learnt it from him and reflecting on

2 The Manu who is referred to in this place is no doubt Manu Svâyambhuva, or 'Manu sprung from the self-existent Being' to whom the Code of Manu is said to have been revealed by Brahman see Manu I 58. Nārada is one of the seven principal Ṛishis. He is also reckoned among the Pragâpatîs lords of creatures or 'creators' and is viewed as the chief of heavenly musicians. Mārkaṇḍeya is elsewhere called 'the long lived' and is celebrated for his austerities. He is the reputed author of a well known Purāṇa, called after him the Mārkaṇḍeya Purāṇa.

3 Bhṛgu one of the great Ṛishis of antiquity is in the Code of Manu introduced as a son of Manu, and as the compiler of the

the (limited duration and) capacity of human life reduced it to eight thousand (slokas) and delivered this (abridgment) to Sumati the son of Bhrigu

4 Sumati the son of Bhrigu after having learnt (this book) from him and considered what human capacity had been brought down to through the (successive) lessening of life (in the four ages of the world) reduced it to four thousand (slokas)

5 It is this (abridgment) which Manes and mortals read whilst the gods Gandharvas and other (exalted beings) read in extenso the (original) code, consisting of one hundred thousand (slokas) There the first sloka runs as follows 'This universe was wrapped up in darkness, and nothing could be discerned Then the holy self-existent Spirit issued forth with his four faces

6 After this exordium chapter follows chapter

present version of the Code of Manu see Manu I 35 59 60 The fact of his being mentioned here as the father of Sumati the compiler of the final recension of the Code of Manu renders it probable that this work may have closely resembled the now extant Code of Manu However the latter work has not more than 2684 slokas instead of the 4000 attributed to the version of Sumati.

4 As for the successive lessening of life and general deterioration of the world in the four ages *Kṛta*, *Treta* *Dvāpara*, and *Kali* see Manu I, 81-86

5 A observes expressly that the term there refers to the original Code in 100 000 slokas The sloka here quoted is nearly identical with Manu I 5 a, 6 a

6 The *Mâtṛikā* or Introduction (compare *divyamâtṛikā* a general introduction to the law regarding ordeals in the *Mitāksharā*, p 139) which is here attributed to Nārada appears to have formed part of the abridgment in 12 000 slokas which was originally composed by him. It was composed in the *Sūtra* style, i e it was made up of aphorisms The slokas are frequently designed as *Sūtras* by the commentators of law books Supposing this work to have consisted of twelve chapters like the present Code

continuously There the ninth chapter is headed, 'Judicial Procedure There Nârada the divine sage composed an Introduction in the Sûtra style as follows It begins with the following sloka

of Manu each chapter would have contained about 1000 slokas The Nârada smṛiti actually has about 1000 slokas In the Code of Manu forensic law is treated in the eighth and ninth chapters The compiler of the present work declares his composition to be the ninth chapter of Nârada's abridged version of the Code of Manu In the above enumeration of twenty four subjects treated in the original Code of Manu, judicial procedure is introduced as the seventh and eighth subject This coincidence indeed might be accidental

INTRODUCTION

I LEGAL PROCEDURE

*₁ When mortals were bent on doing their duty alone and habitually veracious there existed neither lawsuits nor hatred, nor selfishness

*₂ The practice of duty having died out among mankind lawsuits have been introduced and the king has been appointed to decide lawsuits, because he has authority to punish

3 Documents and (the testimony of) witnesses are declared to be the two methods for clearing up doubtful matters, where two parties are quarrelling with one another

*₄ Proceedings at law are of two kinds, attended by a wager or not attended by a wager A lawsuit

I 1 Where the sun shines there is no shade Where there is shade there the sun does not shine Similarly where virtue reigns there are neither lawsuits nor hatred, nor selfishness On the other hand, where these three are there virtue is not to be found A The object of this introductory portion is to show how far judicial procedure is connected with Dharma 'Virtue' or 'Duty' the principal subject of an Indian law book The *Vīramitrodaya* and other compilations attribute a further hemistich to Nārada in which the happy age here alluded to is referred to the period when Manu, the father of mankind was reigning on earth

3 Yāgñavalkya II 22 Vasishṭha XVI 10, Viṣṇu VI 23

4 A lawsuit attended by a wager is where one of the parties promises in writing to pay a certain sum to the king over and above the amount in dispute A lawsuit not attended by a wager is one devoid of a stipulation of this sort *Vīramitrodaya*. This is apparently the correct explanation. Asahāya observes that the amount staked may be much smaller than the amount in dispute.

attended by a wager is where (either of the two parties) stakes in writing a certain sum which has to be paid besides the sum in dispute (in case of defeat)

5 In a lawsuit attended by a wager he of the two who is cast must pay his stake and a fine when his defeat has been decided

* 6 The plaint is declared to be the essential part of a proceeding at law If he succumbs with it, the defendant loses the whole suit If he can prove the charge, he gains the suit.

* 7 Gatherings (kula) corporations (sreni) assemblies (gana) one appointed (by the king) and the king (himself), are invested with the power to decide

Thus although the sum in dispute be very considerable one may stake two hundred *Panas* or a hundred *Panas* or fifty *Panas* only

5 According to Asahâya the wager must not be laid till the two first stages of the trial, the charge and the answer are over The wager may be laid either by the plaintiff or by the defendant The plaintiff whose declaration has been refuted by the defendant stakes a certain sum on the issue of the case Or the defendant after having denied the correctness of the charge stakes a certain sum on the correctness of his own statements to be proved by the issue of the case Asahâya does not say to whom the sum staked has to be paid in his opinion It may be observed that according to Burmese law which is an offshoot of the early law of India ten per cent. of the sum staked should be given to the judge and to the pleaders and the remainder to the victorious party, see Richard son's *Dhammathat* p. 73 *Yâgñavalkya* II 18 (see *Mitâkshara*)

6 *Yâgñavalkya* II, 8

7 Kula means an assemblage consisting of a few persons *Sreni* denotes an assemblage of eminent merchants &c. *Gana* denotes a fellowship such as e.g. the Brahman caste A Other commentators take kula to mean a family meeting *sreni*, a company of artizans *gana* an assembly of cohabitants These three stages of private arbitration may be compared to the modern Panchayats of India

lawsuits, and of these, each succeeding one is superior to the one preceding him in order

*8 Judicial procedure has four feet four bases four means it benefits four reaches four and produces four results This has been declared

*9 It has eight members eighteen topics, a hundred branches, three efficient causes, two modes of plaint two openings and two issues

*10 Virtue a judicial proceeding documentary evidence, and an edict from the king are the four feet of a lawsuit Each following one is superior to the one previously named

*11 There virtue is based on truth a judicial proceeding (rests) on the statements of the witnesses, documentary evidence (rests) on declarations reduced

11 Where both parties adhere strictly to truth in their statements there is virtue or justice clearly enough judicial procedure written proof and a royal edict being quite unnecessary in that case Where either of the two parties is suspected to have made a false statement judicial procedure has to be resorted to which depends on the evidence given by witnesses Documentary evidence (*karitra*) is where the statements of witnesses are consulted written in their own hand on a leaf or on birch bark or on a strip of rind or some other writing material That suit, however which has been decided by an edict from the king himself is superior to all the rest according to the saying What has been decided in a village goes into the town What has been decided in the town goes before the king What has been decided by the king though wrongly decided, cannot be tried anew A The term *karitra* has been rendered in conformity with this interpretation which is confirmed by the remarks of *Kandavara* on this *sloka* Other commentators and several MSS of the *Nārada smṛiti* read *svī karane* or *prasnakarane* for *pustakarane* These commentators explain the term *karitra* in conformity with a text of *Bṛhaspati*, Whatever is practised by a man, proper or improper in accordance with local usage is termed *karitra* (custom)

to writing, an edict (depends) on the pleasure of the king

*12 Because the four means of conciliation and the rest are adopted it is said to have four means. Because it protects the four orders therefore it is said to benefit four

*13 Because it affects criminals, witnesses, the assessors of the court, and the king, to the amount of one quarter each, therefore it is said to reach four

*14. Because it produces these four, justice gain renown, and esteem among men, therefore it is declared to produce four results

*15 Because it consists of these eight the king

12 Because a lawsuit is decided by resorting as the case may be to any one of the four means of success viz conciliation division bribery and force therefore it is said to have four means. Because it protects or guards the four castes and the four orders therefore it is said to benefit four. A. The four orders are the four stages in the life of a twice born man student householder hermit and ascetic.

13 If unjustly decided it brings evil on the four persons mentioned in this sloka. If justly decided, it confers good on them. A.

15 The several functions of the eight (or ten) members of a judicial proceeding are thus described in a sloka attributed to *Brîhaspati*. The chief judge publishes the sentence. The king passes it. The assessors investigate the facts of the case. The law book dictates the judgment i.e. the victory of the one party and the fine imposed on the other party. Gold and silver serve the purpose of administering ordeals. Water is used for relieving thirst or appeasing hunger. The accountant has to compute the sums. The scribe has to record the proceedings. The attendant must compel the defendant and the witnesses to appear in court and detain both plaintiff and defendant if they have given no sureties. According to *Asahâya*, the term 'the king's righteous officer' has to be referred to the king's chief judge and by law

his dutiful officer the assessors of the court the law-book the accountant and scribe, gold fire and water therefore it is said to have eight members

*16 Recovery of a debt deposits, partnership, resumption of gift, breach of a contract of service,

*17 Non payment of wages, sales effected by another than the rightful owner, non delivery of a sold chattel rescission of purchase

*18 Transgression of a compact boundary disputes, the mutual duties of husband and wife, law of inheritance, heinous offences,

*19 Abuse assault, games and miscellaneous these are (the eighteen titles of law) on account of which (judicial procedure) is said to have eighteen topics

*20 Their branches amount to one hundred and

books are meant the compositions of Manu, Narada, Viśvarūpa, and others

16-19 Manu VIII 4-8

20-25 The 132 divisions of the eighteen titles of law are stated as follows by Asahāya —

1 Recovery of a debt.

1 Which debts have to be paid, and which not &c 2 debts (in general), 3 property 4 means of livelihood of a Brahman in times of distress 5 modes of proof 6 lending money at interest 7 usurers 8 sureties 9 pledges 10 documents 11 incompetent witnesses, 12 witnesses for the plaintiff 13 witnesses for the defendant 14 six cases where witnesses are unnecessary 15 validity of testimony how long retained 16 false witnesses 17 exhorting the witnesses 18 valid evidence, 19 invalid evidence 20 what has to be done where both witnesses and documents are wanting 21 ordeal by balance 22 ordeal by fire 23 ordeal by water, 24 ordeal by poison 25 ordeal by sacred libation

2 Deposits

1 Nyāsa (common deposits) 2 aupanidhika (sealed deposits)

thirty two On account of the multifariousness of human concerns, (a judicial proceeding) is said to have a hundred branches

21 Recovery of a debt has twenty five divisions, deposits has six 'partnership has three resumption of gift has four ,

3 yâkṛitaka (loans for use) 4 anvâhṛitaka (deposits for delivery)
5 śilpihastagata (bailments with an artisan) 6 pogandâdhana (property of a minor)

3 Partnership

1 The common undertakings of partners in business, 2 sacrifices offered by officiating priests, 3 tolls

4 Resumption of gift

1 What may be given 2 what may not be given 3 valid gifts, 4 invalid gifts

5 Breach of a contract of service

1 Service 2 impure work 3 conduct of a student, 4 rules of conduct for an apprentice, 5 rules of conduct for a manager
6 fifteen sorts of slaves, 7 emancipation from slavery 8 legal position of a slave, 9 release of a slave by the favour of his master

6 Non payment of wages

1 The wages of servants, 2 cowherds and the rest 3 fee of a public woman 4 questions arising in regard to the payment of rent.

7 Sales effected by another than the rightful owner

1 Sale without ownership, 2 treasure trove

8 Non delivery of a sold chattel

9 Rescission of purchase

1 Time 2 worn clothes, 3 loss on metals (caused by working them), 4 preparing cloth

10 Transgression of a compact.

11 Boundary disputes

1 Quarrels regarding a field, 2 quarrels regarding a house
3 quarrels regarding a garden 4. quarrels regarding a well 5

22 Breach of service' consists of nine divisions
 'wages' has four divisions there are two divisions
 of 'sales effected by another than the rightful owner'
 'non-delivery of a sold chattel' has a single division
 only,

23 Rescission of purchase has four divisions
 transgression of compact is onefold boundary
 disputes is twelvefold there are twenty divisions in
 mutual duties of husband and wife

quarrels regarding a sanctuary 6 quarrels regarding (the boundary
 of) a village 7 prohibition to decorate (to cause nuisance in?) a
 cross road, &c 8 making a dike 9 waste land 10 protection
 of grain, 11 compensation for grain (destroyed by cattle) 12
 the foundation (of a householder's existence)

12 Mutual duties of husband and wife

1 Examination of a man's virile potency, 2 gift of a maiden
 in marriage 3 the offence of insulting an officiating priest 4
 the right time for giving a maiden in marriage, 5 the offence
 of casting a blemish on an unblemished maiden or suitor 6
 marriage forms, 7 rule regarding incontinent females and other
 (unchaste women) 8 what constitutes legitimate issue 9 illicit
 intercourse, 10 punishment of adultery 11 incest 12 intercourse
 with cattle and other crimes of this sort 13 raising issue where
 there is no husband, 14 the offspring of adulterous intercourse
 15 16 authorised and unauthorised intercourse of a woman with
 one not her husband 17 18 rule regarding bad wives and hus-
 bands 19 conduct prescribed for a woman whose husband is ab-
 sent, 20 definition of a rendezvous

13 Law of inheritance

1 Definition of heriage 2 its distribution, 3 indivisible pro-
 perty, 4 what constitutes stridhana 5 descent of stridhana after
 the death of the proprietress 6 rules regarding the property of
 brothers 7 division of the property between parents and sons,
 8 case of a daughter whose father is unknown, &c. 9 case of a
 father unauthorised (to raise issue) 10 share of a son suffering
 from a chronic or agonising disease, or otherwise (incapable of
 inheriting) 11 division among the sons of a reunited coparcener

24 'Law of inheritance consists of nineteen divisions, 'heinous offences' of twelve, of both 'abuse and 'assault' there are three divisions

25 'Gambling with dice and betting on animals has a single division, miscellaneous has six divisions Thus, adding up all these branches (of the principal titles of law) there are one hundred and thirty two of them

12 management of the property of a deceased or absent brother
 13 work done by one to whom the management of the family property has been entrusted &c, 14 decision in the case of a contested partition, 15 enumeration of the divers kinds of sons [There ought to be nineteen subdivisions of the law of inheritance instead of fifteen That number might be obtained by counting each reason of exclusion from inheritance as a separate division]

14 Heinous offences

1 What constitutes a heinous offence 2 punishments ordained for heinous offences 3 robbery, 4 distinction between articles of inferior middling and superior value, 5 6 the two kinds of robbers 7 seizure of robbers 8 granting food or shelter (to thieves) &c, 9 thieves 10 punishment of heinous offences and larceny 11 tracing a thief by the foot marks 12 confiscation of the property of thieves or others when the stolen goods have not been recovered.

15 16 Abuse and assault.

1 Abuse 2 assault, 3 punishments ordained for both offences

17 Gambling with dice and betting on animals

18 Miscellaneous

1 Protection of the (four) castes and (four) orders by the king in person 2 dignity of a king 3 maintenance of Brahmans by the king 4 authorisation from the king to bestow one's property (on Brahmans) 5 description of the various modes of subsistence permitted to a Brahman 6 eight things worthy of reverence

It should be noted that Asahâya himself in the sequel of his commentary does not adhere strictly to this division and gives

* 26 Because it proceeds from one of these three motives carnal desire wrath and greed therefore it is said to have three efficient causes These are the three sources of lawsuits

* 27 It is said to have two modes of plaint, because a plaint may be either founded on suspicion or on fact. It is founded on suspicion, when the defendant has been seen to move in bad company. It is founded on fact when the stolen chattels or the like have come to light

* 28 Because it is based on the statements of the two litigants therefore it is said to have two openings There the accusation is called the plaint the answer is called the declaration of the defendant

* 29 Because it may be founded either on truth or on error therefore it is said to have two issues Truth is what rests on true facts Error is what rests on mistake of facts

30 Ordeals even are rendered nugatory by artful men Therefore let no mistake be committed in regard to place, time quantity and so on

a number of different headings, which will be quoted in the notes to this translation

27 Supposing that the owner of a lost chattel casts his suspicion on a man who is constantly seen in the company of well known thieves and other bad characters or who lives with prostitutes or is addicted to gambling if he impeaches that man it is called a charge founded on suspicion If a man is impeached after having been taken with the maner the stolen goods having been found among his property it is called a charge founded on fact In a charge founded on suspicion the decision must be referred to the gods (i e to an ordeal) In a charge founded on fact the decision rests with the king's judge A

29 The issue of a lawsuit, like its beginning may be twofold Either a just decision is given in accordance with fact, or the decision is erroneous A

31 There a king who acts justly must neglect error when it is brought forward, and seek truth alone because prosperity depends on (the practice of) duty

32 As seven flames rise from fire, even so will seven good things become manifest in a self-restrained king who passes just sentences at trials

33 Religious merit gain fame esteem among men reverence on the part of his subjects, conquests and an everlasting residence in paradise

34 Therefore let a king, after having seated himself on the judgment seat, be equitable towards all beings, discarding selfish interests and acting the part of (Yama) Vaivasvata, (the judge of the dead)

* 35 Attending to (the dictates of) the law-book and adhering to the opinion of his chief judge let him try causes in due order, adhibiting great care

36 The connection (agama) must be examined

31 Brought forward i.e. stated by the plaintiff The king shall neglect it i.e. not accept it as correct. A Yâgñavalkya II 19

32 The idea that fire is composed of seven rays or flames is derived, no doubt from the seven rays of the sun god Sûrya who is represented down to the present day as riding in a chariot drawn by seven horses

34 Discarding selfish motives i.e. free from love or wrath (sine ira et studio) The part of Yama, the king of righteousness i.e. the distribution of the rewards and punishments due to good and bad actions A Yagñavalkya II 1 Vishnu III 92 &c

35 While consulting the law book he should take heed at the same time of whatever is brought forward by the assessors of the court conjointly with the chief judge He should abide by the opinion delivered by the latter He should try causes in due order i.e. so that the four feet of a judicial proceeding follow one another in due succession A Manu VIII 1 8 9, Yagñavalkya II 1 &c

36 Âgama the connection, i.e. the relation of the case in hand to the entire system of law the title of law' its appertaining to a subdivision of this or that title of law ts cure i.e. it must

first of all then the title of law must be ascertained thereupon follows the cure, and the decision comes at the end. These are the four parts of a trial

37 Avoiding carefully the violation of either the sacred law or the dictates of prudence he should conduct the trial attentively and skilfully

38 As a huntsman traces the vestiges of wounded deer in a thicket by the drops of blood even so let him trace justice

* 39 Where the rules of sacred law and the dictates of prudence are at variance he must discard the dictates of prudence and follow the rules of sacred law

40 When it is impossible to act up to the precepts of sacred law, it becomes necessary to adopt a method founded on reasoning because custom decides everything and overrules the sacred law

41 Divine law has a subtle nature and is occult

be cured like an illness by carrying it through the four parts of a judicial proceeding A

38 As deer in a thick forest is difficult to catch even so justice is difficult of attainment. A huntsman traces the game by following up the drops of blood to the spot though the soil may be covered by thick grass where the wounded deer is seen by him. Similarly a king following the course of the lawsuit, traces law to the point where justice shines forth clearly A. Manu VIII 44

39 Yâgñavalkya II 21

40 According to A this verse inculcates the superiority of custom to written law. Thus both the practice of raising offspring to a deceased or disabled brother and the remarriage of widows (see twelfth title of law) are specially sanctioned in the sacred law books. Yet these two customs are opposed to established practice. Therefore subtle ratiocination is required. A quotes a verse to the effect that the immemorial usages of every province which have been handed down from generation to generation can never be overruled by a rule of the sacred law Vasishtha XVI, 4 Gautama XI 23

41 The visible path either ratiocination founded on

and difficult to understand Therefore (the king) must try causes according to the visible path

* 42 One who has never committed robbery may be charged with robbery An actual robber, on the other hand, may be acquitted of the charge of robbery *Māṇḍavya* was tried and declared to be a robber

* 43 In the case of a woman, at night, outside of

internal or circumstantial evidence or it may mean a sound decision A Gautama XI 24

42 Justice has been stated (in 41) to be difficult to attain because a man may be suspected to be a thief merely on account of stolen chattels being found amongst his property Thus the great sage *Māṇḍavya* even was reproached with theft by an in judicious king because faithful to his vow of silence he did not make a reply when he was charged with theft. Therefore it is necessary to adhibit great care in discerning righteous men from evil doers A The history of *Māṇḍavya* is related in the *Mahābharata* I 4306 foll A gang of robbers (*Dasyus*) being pursued by a guard dropped their booty in the habitation of *Māṇḍavya* the ascetic and hid themselves in his hermitage Soon after, their pursuers arrived and asked *Māṇḍavya* in which direction the robbers had proceeded The saint made no reply whereupon the guard took to searching the hermitage in which they discovered both the robbers and the stolen chattels The thing looking suspicious they conducted both the saint and the robbers before the tribunal of the king who ordered the saint to be tied to a stake However though tied to the stake and left without food the saint remained alive After some time the king ordered him to be released and asked his forgiveness for the ill usage offered to him

43 'In the case of a woman i e if the lawsuit has been instituted by a wife or daughter or if it has been decided by a woman. 'At night, as the night is the proper time for sleeping and not the proper time for attending to judicial business for it is obviously impossible to try a cause at night 'Outside of the village,' means in the wood A lawsuit, when decided in one of these places (or special circumstances), is not finally decided and settled, the cause has therefore to be tried anew Such is the meaning of this rule A

the village, in the interior of a house, and by enemies a sentence passed under any one of these various circumstances may be reversed

* 44 Owing to the recondite nature of lawsuits and the weakness of memory, the answer may be delayed at pleasure in lawsuits relating to a debt or other subject, with a view to ascertain the true facts

* 45 Let him answer at once in charges concerning a cow landed property gold a woman robbery abuse an urgent affair, a heinous offence or a calumny

* 46 One who tries to right himself in a quarrel without having given notice to the king, shall be severely punished and his cause must not be heard

* 47 A defendant who absconds when the cause is about to be tried and he who does not take heed of what (the claimant) says shall be arrested by the plaintiff until the legal summons has been declared

* 48 Local arrest, temporary arrest, inhibition

44 Owing to the recondite nature of lawsuits, and on account of the weakness of men's memory which renders them unable to remember distinctly any event that has occurred long ago the defendant in a lawsuit must be allowed sufficient time to prepare his answer A. Read *madishu* in the text

45 46 The first rule constitutes an exception to the preceding one In the cases here mentioned the answer should be tendered at once A Gautama XIII 40 41 Yâgyavalkya II 12 16

48 Local arrest is in this form If you move from this place the king will arrest you Temporary arrest is in this form You must not leave this house for a certain period Inhibition from travelling consists of a prohibition not to undertake a journey on which one has determined Arrest relating to karman is in this form 'You must not persevere in performing this or that karman (religious ceremony) Thus according to A and Viramitrodaya p 55 When placed under arrest of any one out of these four kinds the person arrested must not break the arrest Otherwise he will become guilty of an offence against the king A.

from travelling and arrest relating to karman these are the four sorts of arrest One arrested must not break his arrest

* 49 One arrested while crossing a river or in a forest (kântâra), or in a bad country or during a great calamity or in another such predicament, commits no fault by breaking his arrest

[50 Those causes which have been tried in the king's court, (or) by friends connections, or relations shall be tried anew after a fine of twice the original amount (of the sum in dispute) has been imposed]

* 51 If one arrested at a proper time breaks his arrest, he shall be punished One who arrests improperly is (equally) liable to punishment

* 52 One about to marry one tormented by an illness one about to offer a sacrifice one afflicted by a calamity, one accused by another one employed in the king's service

49 Kantâra, a fearful forest a bad country a dangerous place 'a great calamity a public disaster or a heavy affliction and the like One who breaks an arrest which has been put on him in one of the places or on one of the occasions hitherto mentioned does not commit a criminal offence by doing so A

50 A. observes that this verse though it ought not to come in here has been inserted from the original work (of Narada ?) It means according to him that both those lawsuits which have been decided by the king in person and those which have been decided by friends, connections or relatives shall be tried anew in case the double amount of the fine ordained has been paid Yâgnavalkya II 305 Perhaps the word (o) had better be omitted

51 A proper time means 'a suitable time i.e. any other time besides the various occasions mentioned in paragraph 45 One who arrests improperly is either one who arrests on one of the prohibited occasions or one who arrests without sufficient reason A

52 Artizans, i.e. manual labourers while engaged in their work A

* 53 Cowherds engaged in tending cattle, cultivators in the act of cultivation artisans while engaged in their own occupations soldiers during warfare

* 54 One who has not yet arrived at years of discretion, a messenger one about to give alms one fulfilling a vow, one harassed by difficulties a person belonging to any of these categories must not be arrested nor shall the king summon him (before a court of justice)

* 55 One accused of an offence must not lodge a plaint himself, unless he have refuted the charge raised by the other party Neither (is he allowed to accuse) one who has already been accused by a different party It is wrong to strike one again who has already been struck (by another)

56 When he has proffered a charge he must not

53 54 One who has not yet arrived at years of discretion i.e. a boy A messenger whether employed in the affairs of the king or by a private person One about to give alms at one of the Parvan days (the days of the four changes of the moon) One fulfilling a vow performing a special religious observance One harassed by difficulties i.e. one who has been befallen at the time being by a calamity from the king or from fate All persons in any such situation must not be arrested A.

55 The defendant after having been accused by the plaintiff must not proffer a counter plaint against the plaintiff without having previously cleared himself of the charge raised against himself because two different causes cannot be tried at one and the same time Neither must a new plaint be lodged against one who has already been impeached by another because one already hit must not be hit again If a deer has been first hit by one huntsman and is again hit by another hunter the effort of the latter is to no purpose The first huntsman may justly claim the deer and not the second A Yagñavalkya II 9

56 He must not alter the charge as e.g. by claiming a larger or a smaller sum afterwards than he had done before If e.g. after

again alter it. He must not recede from his previous claim. By doing so he will lose his suit.

57 He must not lodge a false plaint. He is a sinner who proffers a false charge (against any one). Whatever fine is declared in a suit of this sort has to be paid by the claimant.

58 If a man delays his answer under false pretences or if he stands mute at the trial or if he revokes his own former statements these are the signs by which a loser of his cause may be known.

59 One who absconds after having received the summons, or who does not make any defence after having arrived in court shall be punished by the king because his cause is lost.

60 If a man being questioned does not uphold

having first claimed as being his due a sum amounting to 20 Gadya vakas of gold he says afterwards 'This man has to give 50 drammas (drachmas) to my son it is called 'receding from one's first claim and proffering another claim. A. Yagñavalkya II, 9.

58 Delaying one's answer under false pretences is e.g. if a man says 'I am unwell just now' or 'I am unclean just now' I make no answer. Likewise if a man, after having been asked by the judges does not speak or if having made a statement previously he revokes it by such signs as these a man may be known to have lost his cause. A.

59 He who after having been summoned by the king makes off or who having decamped and having been seized with difficulty by the king's officers does not make any reply to the questions put to him shall be fined by the king because he loses his suit. A. Manu VIII 55 56 Yâgñavalkya II 16.

60 If being questioned by the judges he does not uphold or maintain a statement previously made by himself. A. The commentators of Manu in commenting on an analogous passage of the Code of Manu (VIII 54) give the following example. A man has made a certain statement regarding the money in dispute. The judge asks him afterwards 'Why did you tender or accept the money at night?' The man thereupon does not abide by his own

See Jolly translation of the eighth chapter of

a statement duly made by himself (at a former stage of the trial) or if he ends by admitting what had been previously negatived by himself,

61 Or if he is unable to produce any witnesses after having declared that they are in existence and having been asked to produce them by all such signs as these persons devoid of virtue may be known

* 62 When a lawsuit has been decided evidence becomes useless unless a document or witnesses can be produced who or which had not been announced at a former stage of the trial

* 63 As the (fertilizing) power of rain is thrown away on ripe grain even so evidence becomes useless when the suit has been decided

the Code of Manu) He who after having answered a question in the negative previously makes an opposite statement afterwards The meaning is as follows He is cast if having been interrogated by the judges Can you adduce any witnesses or documents? he replies at first by saying I have none and goes on to say I have witnesses and documents A The reading seems faulty See Manu

61 If a man says he has documents or witnesses and the judges having heard this say to him, If you have witnesses show them' i e exhibit them if thereupon he does not adduce them he loses his suit A Manu VIII, 57

62 This wicked debtor owes me money He declines to restore it though I can prove his obligation to pay me by witnesses and documentary evidence Therefore I must cite him before the tribunal of the king If the claimant says so and does not produce evidence at the time when he proffers his claim, but produces it afterwards it does not make evidence If however a statement of this kind had been previously made and the claimant owing to some unfortunate accident or to forgetfulness &c has merely failed to repeat it at the third stage of the trial (i e during the judicial inquiry), it may be renewed and shall be examined by the judges although the case had already been decided and sureties been given and taken A Yāgyavalkya II 20

64 False statements even have to be examined if they have been made in due season. That on the other hand which has been passed over in silence through inadvertency fails to produce any result even though it be true.

* 65 If a man is of opinion that the suit has been decided and punishment declared in a way contrary to justice, he may have the cause tried once more provided he should pay twice the amount of the fine inflicted.

* 66 If a verdict contrary to justice has been passed the assessors of the court must pay that fine, because nobody certainly can act as a judge without incurring the risk of being punished (eventually).

67 When a member of a court of justice actuated by wrath, ignorance or covetousness has passed an

64 Yāgñavalkya II 19

65 A lawsuit is 'decided' at the time when the judges after having come to a unanimous agreement about the verdict to be passed on the plaintiff and defendant give them a written record of their respective victory and defeat. The punishment has been declared when the judges after passing the verdict, dictate a certain punishment, in accordance with the comparative heaviness or lightness of the offence committed. In both cases if a man considers himself to have lost his cause through an unjust sentence he may have the cause tried anew if he pledges himself to pay twice the amount of the fine to the king's judge. A. Yāgñavalkya II 305

66 'Where an unjust sentence has been passed the blame attaches to the assessors of the court. Therefore they have to pay that fine. A. Yāgñavalkya II 4

67 Wrath is when he bears him an old grudge. Ignorance means folly. That is done through covetousness which is done in consideration of a bribe. He who passes an unjust sentence i.e. who says what is opposed to justice. Such an assessor has to be considered as no assessor of the court i.e. he is unworthy to sit in the court. A.

unjust sentence he shall be declared unworthy to be a member of the court, and the king shall punish him for his offence

68 That king however, who is intent on doing his duty, must be particularly anxious to discover what is right and what is wrong because there is a variety of dispositions among mankind

69 There are some who give false evidence from covetousness There are other villainous wretches who resort to forging documentary evidence

70 Therefore both (sorts of evidence) must be tested by the king with great care documents according to the rules regarding writings, witnesses according to the law of witnesses

* 71 Liars may have the appearance of veracious men and veracious men may resemble liars There are many different characters Therefore it is necessary to examine (everything)

* 72 The firmament has the appearance of a flat surface and the fire-fly looks like fire Yet there is no surface to the sky nor fire in the fire-fly

* 73 Therefore it is proper to investigate a matter even though it should have happened before one's own eyes One who does not deliver his opinion till he has investigated the matter will not violate justice

68 The two following paragraphs show what is meant by the diversity of men's minds A.

72 As the sky has the appearance of a level plain like the earth yet there is nothing like earth about it and as there is no fire in the fire fly although it sparks like fire even so the utterances of men are often untrue though they may have the appearance of true statements Therefore it is necessary to examine strictly even what a man professes to have seen with his own eyes A.

* 74 Thus a king, constantly trying lawsuits with attention, will acquire widespread and brilliant renown in this life and the abode of Indra after his death

II THE PLAINT

1 The claimant after having produced a pledge the value of which has been well ascertained, shall cause the plaint to be written (He must have been impelled) to proffer his claim by the nature of the claim and must be intent on promoting the victory of his cause

* 2 The defendant (creditor) immediately after having become acquainted with the tenour of the plaint, shall write down his answer, which must correspond to the tenour of the plaint

* 3 Or let him (the defendant) deliver his answer on the next day or three days or seven days later

II 1 The term *sunisṭabalādhânas*, which has been taken to mean 'after having produced a pledge the value (or competence) of which has been well ascertained' is by no means clear and admits of several different interpretations. Thus it might be rendered 'after having carefully explored the nature of the wrong offered to him'. A does not explain this obscure term. Impelled by the nature of his claim not by the king or by an enemy but merely by his own cause Intent on promoting the victory of his cause i.e. absolutely determined not to embark in any other undertaking previous to having gained his cause A

2 The creditor is called plaintiff. The debtor is called defendant. The defendant after having heard the tenour of the plaint which has been tendered in writing by the plaintiff shall write an answer i.e. make a reply which corresponds to the tenour of the plaint A. Read *pratyarthi* in the text

3 The defendant may tender his written answer on the next day or three days, or seven days after he has heard the accusation. The plaintiff on the other hand is not allowed any time to reply to the statements of the defendant. His victory (or defeat) is

The plaintiff no doubt duly obtains his victory at once when the trial has reached the third stage (the examination of the evidence)

* 4. An answer is fourfold a denial a confession a special plea and that which is based on a plea of former judgment

* 5 A denial is fourfold (being couched in any one out of the four forms hereafter mentioned)

This is false or I do not know anything about it or I was not present at the transaction or I was not in existence at the time when this event took place

6 A contradiction the reverse a retort and a friendly counsel in one out of these four forms should the answer be given and it should be in conformity with the tenour of the plaint

* 7 Before the answer to the plaint has been tendered by the defendant, the plaintiff may amend his own statements as much as he desires

decided at once, by examining the proofs that have been adduced A Yâgñavalkya II 7

4 A special plea is when the defendant admits a fact but qualifies or explains it so as not to allow it to be matter of accusation A plea of former judgment is when the defendant pleads that the very same cause has been previously tried at the tribunal of this or that judge and that his adversary has been cast A

6 This paragraph says A occurs in the original work, and has therefore been inserted in this place though it is difficult of explanation and a mere paraphrase of the preceding paragraph It has been rendered in accordance with his interpretation The reverse means confession A retort means a special plea. A friendly counsel means plea of former judgment A

7 The plaintiff may go on altering and improving his written declaration till the defendant gives in his answer When however the plaint has been answered he is no longer at liberty to make any further amendments. A.

* 8 These are called the defects of a plaint (1) if it relates to a different subject (2) if it is unmeaning (3) if the amount (of the sum claimed) has not been properly stated, (4) if it is wanting in propriety (5) if the writing is deficient (6) or redundant (7) if it has been damaged

9 By whomsoever a claim is raised whatever and from whomsoever it may have been claimed from that very person must the claimant receive that very thing and it must not be (claimed) mutually or (claimed) from a stranger Thus a claim relating to a different subject may be of three kinds

10 Thy friend here has thought in his mind that I am his enemy On account of this great intolerance I have impeached thee here

11 If he omits to state the amount of the thing (claimed) and forgets to aim at brevity(?) this fault of a plaint is called omission of the amount (claimed), and it should be avoided

12 Let him avoid improper statements in the plaint (e g an accusation which is raised) by a plurality of persons against one single-handed or

8 A. does not explain the rather obscure terms occurring in several of the following paragraphs He confines himself to stating that they contain an accurate definition of the seven defects of a plaint as enumerated in paragraph 8 to which the defect described in paragraphs 15 16 has to be added as an eighth.

9 The three kinds of a claim relating to a different subject appear therefore to be these where it proceeds from a different person than the creditor where the amount of the sum claimed has not been stated correctly, and where the plaint has been addressed to a wrong person

10 This is an instance of an unmeaning or frivolous accusation A

11 The reading of this paragraph is uncertain

(a cause which) is opposed to (the interests of) the city or kingdom (in which he lives)

13 A plaint in which a mere dot is omitted or where a word or a syllable has been obliterated, or where too little or too much has been written or which is absurd, such a plaint should be carefully avoided

14 He should (equally) avoid a plaint which has been destroyed or damaged (by an accident) or which has been soiled by water oil or other (liquids) even though the purport and meaning of the plaint be quite plain

*15 A plaint though otherwise established is not correct if it is contrary to established law and usage

16 A claim which is proffered in this form—'I gave this to him while he was in a state of intoxication with fragrance (through a smell of perfume) — cannot succeed, because it is contrary to established usage

*17 Where different words are (subsequently) inserted (in the plaint), and where the sense becomes different (in consequence) there the judicial investigation becomes confused and the evidence itself is thrown into confusion

*18 When the claimant, in a passion, and actuated

17 A illustrates this rule by the following example The claimant has claimed a certain sum At the time of the trial he names a larger sum than he did before Thus the judicial investigation becomes confused

18 If a man actuated by one of the three passions sexual desire wrath and covetousness mentions some special (important) circumstance at the trial the scribe shall enter it at once in writing on a board or leaf or Bhûrga bark or box or wall A This rule seems to relate to incidental statements which escape one of the parties through inadvertency Thus in the well known drama *Mrīkhakaṭikā*, the wicked prince *Samsthānaka* when informing the

by one of the immoral motives, such as partiality makes some special statement it shall at once be completely reduced to writing on a board or other (writing material)

19 Other statements than those (taken down at first) regarding the plaintiff on a board or other (writing material) shall be removed after careful consideration by persons versed in law, (when reporting on the trial) for the information of the king's judge

20 Let such persons reduce to writing the statements of each party and whatever else has been written on the board, together with the names of the

judge that Vasantasenâ has been murdered adds not by myself The judge pounces upon the latter statement suspicious as it looks and causes the scribe to put it down in writing on the floor The prince perceiving that he has committed himself effaces the writing with his foot The custom of writing the statements of the parties on the floor is repeatedly referred to in the Indian dramas From what Brîhaspati says it would seem that in the time of this law writer the statements of the parties had first to be written on a board and then on a leaf after all the required corrections had been entered Narada seems to refer to the same custom in paragraphs 19 and 20

According to Dr Burnell the boards referred to in the law books must have been a sort of black wooden boards See Burnell South Indian Palæography 2nd ed p 87

20 In translating this paragraph the obscurity of which is only surpassed by the preceding paragraph I have deviated from the interpretation proposed by the commentator

A takes this paragraph as containing four independent clauses 1 what has been stated or admitted by both parties 2 whatever else has been written on the board 3 the depositions of the witnesses, 4 what each party has conceded to the other These four things should be reduced to writing by the persons entrusted with the judicial investigation Whatever else has been written on the board i e whatever the plaintiff amends or adds while the plaint is being reduced to writing Such statements, as shown in the next paragraph, are called Pratyâkalita.

witnesses, as well as those statements in which both parties concur

21 Additional statements of the plaintiff (or defendant) which are not contained in the writings of both parties shall be (subsequently) entered into his (their) declaration. They are called Pratyākalita ('what is interposed')

* 22 If one deputed by the claimant or chosen as his representative by the defendant speaks for his client in court the victory or defeat concerns the party (himself and not the representative)

* 23 He deserves punishment who speaks in behalf of another, without being either the brother the father the son, or the appointed agent and so does he who contradicts himself at the trial

* 24 He who forsakes his original claim and produces a new one, loses his suit, because he confounds two claims with one another

* 25 A verbal error does not annul the claim in

21 A infers from the use of the term both parties that a Pratyākalita statement may proceed from the defendant as well as from the plaintiff though the plaintiff alone is specially mentioned. A adds that this rule applies equally to all those kinds of statements which are mentioned in paragraph 20

22 This rule applies equally where a party is prevented from appearing before the court by illness and where the party is not a good speaker and has appointed an agent or attorney for that reason. A

23 This prohibition relates to those who from love anger or avarice meddle with the affairs of strangers and pretend to act in their behalf at court. A

24 If a claimant on finding himself unable to prove his claim at the trial proffers a different claim he must be pronounced the losing party on account of the confusion caused by him. A

25 An erroneous statement does not necessarily the defeat

actions of any kind. So if the case relates to cattle or to a woman or to land or to a debt, he is liable to punishment but his claim is not annulled.

26 Where the defendant denies the charge the claimant has to prove his accusation unless the denial should have been in the form called Pratyavaskandana.

* 27 What the claimant has fully declared word for word in the plaint that he must substantiate by adducing evidence at the third stage of the trial.

* 28 Proof is said to be of two kinds human and divine. Human proof consists of documentary and oral evidence. By divine proof is meant the ordeal by balance and the other (modes of divine test).

29 Where a transaction has taken place by day,

of the plaintiff. This is particularly the case in one of the following important actions: a case relating to a cow, female buffalo or other cattle; a case relating to a woman; a case relating to landed property i.e. a house, field &c., and a case relating to one of the twenty-five subdivisions of the law of debt. In any case he is not defeated merely on account of an erroneous statement contained in the suit. He does not lose the suit instituted by him though he is liable to punishment. A. The Mitâksharâ (p. 23) has a long gloss on this rule of Nârada from which it appears that the erroneous statements here referred to are statements made through inadvertency and that this rule applies to civil, as opposed to criminal actions. Read vakâñale in the Sanskrit text.

26 An answer in the form called Pratyavaskandana is where the defendant admits the facts adduced by the plaintiff but explains them so as not to be matter of accusation.

27 The claimant must prove at the judicial investigation what ever he has committed to writing in the plaint. A.

29 The divers kinds of divine test will be declared below. In the case of all those transactions which take place during day time eye and ear witnesses are present. Documentary evidence like wise is generally available in such cases. Therefore divine proof should not be resorted to. Where a transaction is known to have

in a village or town or in the presence of witnesses divine test is not applicable

* 30 Divine test is applicable (where the transaction has taken place) in a solitary forest at night or in the interior of a house and in cases of violence, or of denial of a deposit.

31 Where the defendant has evaded the plaint by means of a special plea it becomes incumbent on him to prove his assertion and he is placed in the position of a claimant

* 32 One who takes to flight after having received the summons one who remains silent, one who is convicted (of untruth) by (the deposition of) the witnesses, and one who makes a confession himself these are the four kinds of Avasannas (losers of their suit)

* 33 One who alters his former statements one

taken place in the presence of witnesses divine proof is also not applicable A

30 In all the places and occasions mentioned in this paragraph human proof is not applicable wherefore divine test has to be resorted to A

31 Where the defendant has recourse to the mode of defence called Pratyavaskandana i.e. where he admits the charge but adduces a special circumstance to exonerate himself the plaint becomes purposeless. To the defendant however belongs the onus probandi in regard to the special circumstance mentioned by him He is therefore reduced to the position of a claimant in that it is incumbent on him to prove his assertion at the time of the judicial investigation (kriyâ) A

32 One who though summoned by the king's officers absconds through fear of the accusation brought against him one who stands mute in the assembly when he is asked to make his declaration one who is cast by the depositions of the witnesses and one who confesses to be in the wrong himself these four persons are non suited A. Yâgñavalkya II 16 Manu VIII 55-58

33 Two out of the four losers of their suit who are referred

who shuns the judicial investigation one who does not make his appearance (before the tribunal) one who makes no reply and one who absconds after receiving the summons these five kinds of persons are called Hīna (cast in their present suit)

34 Precious stones such as rubies, golden ornaments, such as Dīnāras, pearls coral shells and other (jewels and precious metals) shall be returned

to in the preceding paragraph may be said to have lost their cause for once and all viz one who is convicted of untruth by the deposition of the witnesses and one who confesses his wrong himself. The two others, viz one who remains silent and one who absconds are liable to punishment but they do not entirely lose their suit as their cause may be tried anew. Similarly the five persons mentioned in par 33 though non suited in the case in hand, may have their cause tried anew. One who alters his statements i.e. one who from forgetfulness says something different from what he had stated before. One who shuns the judicial investigation i.e. one who from repugnance against judicial investigation, throws the proceedings into confusion. One who does not make his appearance before the tribunal i.e. on account of a calamity which has befallen him through the king or through fate, &c. One who makes no reply i.e. one who does not give in his answer at once and asks for delay to prepare it. One who absconds from fear of an enemy. A. This interpretation has evidently been called forth by a desire to reconcile par 33 with the preceding paragraph as the persons called Hīna are partly identical with those designed as Avasannas. It may be doubted however whether par 32 belongs to the original work of Nārada as the identical rule is elsewhere attributed to Brihaspati (see Viram, p 102) and as it is certainly difficult to reconcile the two paragraphs with one another.

34 If the owner of the articles mentioned in this rule sells them for genuine and the purchaser putting belief in his statements accepts them as such and pays for them but finds out afterwards that they are not genuine the seller must take them back, and must give other articles in exchange for them which are really valuable or he must make good their value to the purchaser. A. As for the meaning of the term Dīnāra which corresponds to the Latin denarius, see the Introduction.

to their owner in case they turn out to be imitations only

35 If a man seizes perfumes, or garlands—other than those which have been given to him—or ornaments or clothes or shoes, which belong to the king he deserves to be corporally punished

* 36 The price or value of a commodity, wages a deposit a fine what has been abandoned (by one and found by another) what has been idly promised and what has been won at play none of these articles yields interest except under a special agreement to the purpose

37 Men of the Sûdra caste who proffer a false accusation against a member of a twice born (Aryan) caste shall have their tongue slit by (the officers of) the king and he shall cause them to be put on stakes

38 A royal edict a (private) document a written

35 One who from pride seizes (or uses) one of the above articles, shall be corporally punished if they belong to the king A The reading of this paragraph is quite uncertain

36 The price of a commodity the price paid for a saleable commodity which has been sold A deposit, a trust 'A fine an amercement which has been inflicted by the king's judges 'What has been abandoned what has been seized after its dereliction (by the original owner) What has been idly promised to bards or other worthless persons

37 If the Sûdras by whom this crime has been committed are punished by the king he becomes free from blame Otherwise the blame falls on him, as it is his duty to reward the honest and to punish evil doers A.

38 The divers forms in which a plaint is instituted in each of these several cases (excepting a single case a transaction of sale) are stated as follows by A 1 This man has not taken notice of a certain royal edict 2 This man has (unduly) availed himself of a certain document relating to its owner 3 This man by virtue of a certain written title, has appropriated a slave girl belonging to

title a grant a pledge a (promise reduced to) writing a sale or purchase one who brings a claim in regard to any one of these before the king is known as defendant among those conversant with the rules (of legal pleading)

* 39 Where the deposition of the witnesses has been objected to, it becomes necessary first of all to clear the witnesses from suspicion When the witnesses themselves have been cleared from suspicion he may undertake to remove the doubts which have been raised against their deposition

* 40 When a man has lost his cause through the dishonesty of witnesses or judges the cause may be tried anew When, however, a man has been cast through his own conduct the trial cannot be renewed

41 One convicted by his own confession, one

myself 4 This man raises the revenue of a certain village which has been granted to myself The grant relates to myself only

5 This property has first been pledged to me by the debtor How can any one else enjoy it? 6 Why does not this man deliver this chattel to me which has been promised to me in writing? 7 I have purchased this commodity from him and paid for it. He does not make the commodity over to me —Read *âgñâ*

39 Where the defendant raises groundless objections against the trustworthiness of the depositions of witnesses he is liable to punishment like one who shuns the judicial investigation and loses his suit in consequence After the witnesses have been cleared from suspicion their statements have to be examined in order to remove what looks suspicious in them A

40 Those who have lost their cause either through the statements of their own witnesses or through the decision of the judges, may have their cause tried anew according to a rule previously laid down If however a man has been convicted by his own conduct or if the witnesses adduced by him should turn out to have been corrupted by him the case cannot again be opened A

41 1 One who pleads guilty 2 one convicted by his own

cast through his own conduct and one whom the judicial investigation has proved to be in the wrong (these three) deserve to have their final defeat declared at the hand of the judges

42 Whenever the (false) assertions have been removed the judges shall pass a decree. If they pass a judgment, before the false statements have been removed they will cause evil in the next world and in this

43 One condemned by the judges shall be punished by the king according to law. The victorious party shall receive a document recording his victory, and couched in appropriate language

44 This has been formerly declared by the self-existent Being to be the mouth of a lawsuit. If the mouth of a lawsuit is in order the whole suit is in order but not otherwise

conduct as e.g. by adducing false witnesses or forged documents
3 one convicted by the witnesses those three shall not be punished till they have been condemned by the judges. A

42 When the time for passing a decree has arrived the judges shall carefully remove all mere assertions of either party. Should they omit to do so they would be in danger of condemning an innocent man and might produce evil in this world by causing loss of money and in the next world by barring the way to paradise to themselves as it is the duty of kings to restrain evil doers and to protect the righteous. A.

43 According to *Bṛhaspati* the document of victory which has to be given to the victorious party shall contain an accurate record of the plaint, of the answer and of the judicial investigation

44 The general rules regarding judicial proceedings which have been laid down in the preceding section, are declared to be the mouth of a lawsuit because they are applicable to the trial of every suit. The self-existent Being i.e. Brahman. A

III COURTS OF JUSTICE

* 1 One who has not been authorized must not speak on any account at the trial But authorized persons must deliver their opinion in an unbiassed spirit

* 2 Whether unauthorized or authorized one acquainted with the law shall give his opinion He passes a divine sentence who acts up to the dictates of law

3 If he delivers a fair opinion a member of the court will incur neither hatred nor sin But if he speaks otherwise he at once incurs both

* 4 Let the king appoint, as members of a court

III, 1 Courts of justice are generally thronged by a large attendance. Some of the persons present are intelligent others are not and others are wise in their own estimation only Such persons if unrestrained would disturb the judges by interpreting idle speeches between the legal proceedings and by quarrelling amongst themselves Therefore the first half of this paragraph relates to the punishment ordained for those who speak without authorization Authorized persons, i.e. the judges who sit on the seat of judgment shall strive to be just i.e. they shall deliver a judgment in accordance with justice and shall not show partiality for either of the parties A

2 Where all the assessors of the court pass an unjust sentence from ignorance of the law or from interested motives there a Brahman versed in the sacred law and acquainted with legal proceedings who happens to be present shall point out the law to them, and restrain the judges from their sinful course He shall speak though he has not been appointed to deliver judgment Law is called the voice of the deity A

3 That is called a fair opinion which is not contrary to written law and to custom A judge who delivers a sentence of this kind incurs neither enmity nor sin, i.e. he does not become unhappy either in this world or in the next. A

4 As young bulls are able to carry a heavy burden even so

of justice honourable men, of tried integrity who are able to bear like good bulls the burden of the administration of justice

* 5 The members of a royal court of justice must be acquainted with the sacred law and with rules of prudence noble veracious, and impartial towards friend and foe

6 Justice is said to depend on them, and the king is the fountain head of justice Therefore the king should try causes properly attended by good assessors

7 When lawsuits are decided properly the members of the court are cleared from guilt Their purity depends on the justice (of the sentences passed by them) Therefore one must deliver a fair judgment

8 Where justice is slain by injustice and truth by falsehood the members of the court who look on with indifference, are doomed to destruction themselves

competent judges are able to discharge the onerous duties of their responsible office They must be men of ripe wisdom acquainted with sacred law and with the ways of the world, and the king must have tested their qualifications A Vishnu III 74 &c

5 The law books contain many utterances of the sages which are obscure and difficult to make out. Therefore slow minded persons, who are unable to understand them and to refer their contents to each case in hand, must not be appointed Well descended persons shall be appointed because they will avoid partiality from family pride Veracious persons have a natural abhorrence against untruthfulness. A Yâgnavalkya II, 2

6 On them, i.e. on the judges, whose qualities have been previously described A Vishnu III 72, Manu VIII 1, Yâgnavalkya II, 1 &c.

7 If the king decides lawsuits justly the assessors obtain their own absolution through the just decision A.

8 Identical with Manu VIII 14

9 Where justice, having been hit by injustice enters a court of justice, and the members of the court do not extract the dart from the wound they are hit by it themselves

10 Either the judicial assembly must not be entered at all or a fair opinion delivered That man who either stands mute or delivers an opinion contrary to justice is a sinner

11 Those members of a court who after having entered it, sit mute and meditative and do not speak when the occasion arises, are liars all of them

* 12 One quarter of the iniquity goes to the offender, one quarter goes to the witness one quarter goes to all the members of the court, one quarter goes to the king

13 The king is freed from responsibility the

9 Virtue is here compared to one wounded with a weapon who goes to a physician in order to be cured by him The judges are compared to physicians who by means of a careful judicial investigation deliver justice from the attacks of iniquity If they do not extract the dart of iniquity they are killed themselves by the dart of iniquity which has been spared by them A Nearly identical with Manu VIII 12

10 Either the judicial assembly must not be entered at all, not even a single time or an opinion conformable to justice must be delivered A judge who remains silent or who when asked to pass a sentence says what is contrary to justice is criminal, i e a great sinner A. Nearly identical with Manu VIII 13

11 Those judges who sit mute in the judicial assembly being apparently engaged in meditating over an altogether different affair than that for which the parties have appeared before the tribunal and who fail to declare at the proper time the victory of the one party and the defeat of the other all such persons shall be looked upon by the king as equally criminal with those who pass a false sentence A

12 13 These two paragraphs belong together If the judges

members of the court obtain their absolution and the guilt goes to the offender when the guilty person is punished

14 He who having entered the court delivers a strange opinion ignoring the true state of the case resembles a blind man who regardless swallows fish together with the bones

15 Therefore let every assessor of the court deliver a fair opinion after having entered the court discarding love and hatred in order that he may not go to hell

* 16 As an experienced surgeon extracts a dart by means of surgical instruments even so the chief

were to acquit the criminal and unjustly to condemn the innocent party the iniquity or sinful action committed by the unjust decree would go into four parts i e a quarter of it would go respectively to the shares of the perpetrator of the deed of the witnesses of all the assessors of the court, and of the king If however the guilty person alone is condemned i e if the criminal party loses his cause the king becomes free from guilt, the judges are free from responsibility and the whole guilt falls on the perpetrator of the iniquitous deed A Medhātithi in commenting on the identical rule of Manu (VIII 18) observes that the guilt goes to the king in case the sentence had been passed by him in person Otherwise it goes to his chief judge Identical with Manu VIII 18 19 &c

14 One whose eyesight is unimpaired does not eat fish without having previously removed the bones which would injure his mouth his tongue and his palate A blind man on the contrary eats fish together with the bones, because he is unable to remove them The case is similar with the eye of knowledge A

15 Considering all this, let a judge after having entered the court of judicature, reject every kind of bias and deliver a fair i e an impartial opinion in order that he may not go to hell burdened with the crime of a guilty person (acquitted by him) A.

16 As a skilful surgeon conversant with the art of extracting a dart extracts it though it may be difficult to get at and invisible by the application of surgical instruments of spells and other manifold artful practices, even so a judge shall extract the dart of

judge must extract the dart (of iniquity) from the lawsuit

* 17 When the whole aggregate of the members of a judicial assembly declare, 'This is right the lawsuit loses the dart, otherwise the dart remains in it

18 That is not a judicial assembly where there are no elders They are not elders who do not pass a just sentence That is not a just sentence in which there is no truth That is not truth which is vitiated by error

iniquity which has entered a lawsuit, by employing the artful expedients of judicial investigation A

17 The members of a judicial assembly are those who have come together for the trial of a cause A

18 This paragraph in the original is a verse composed in the Trishubh metre, and has the look of an old versus memorialis Though the author of the Nārada smṛiti has incorporated it in his work its contents do not quite fit in with his own ideas regarding the constitution of a judicial assembly and the prominent place which he assigns to the chief judge of the king

FIRST TITLE OF LAW

THE LAW OF DEBT

1 Payment of a Debt

* 1 Which debts must be paid which other debts must not be paid by whom and in what form (they must be paid), and the rules of gift and receipt (all that) is comprised under the title of Recovery of a Debt

* 2 The father being dead, it is incumbent on the sons to pay his debt, each according to his share (of the inheritance), in case they are divided in interests Or if they are not divided in interests, the debt must

The twenty five sections into which the law of debt has been divided in this translation correspond in the main though not throughout to the headings proposed by Asahâya in different portions of his work. Asahâya, as pointed out before is not consistent with himself in this respect It is curious to note that the whole law of evidence excepting the general rules laid down in the preceding chapters has been inserted by Narada between the divers rules of the law of debt He seems to have followed in this respect as in other particulars the example set to him by the earlier legislators such as Manu and Yagnavalkya

I 1 2 If a debt contracted by the father has not been repaid during his lifetime by himself it must be restored, after his death, by his sons Should they separate they shall repay it according to their respective shares If they remain united they shall pay it in common or the manager shall pay it for the rest no matter whether he may be the senior of the family or a younger member who during the absence of the oldest, or on account of his incapacity has undertaken the management of the family

be discharged by that son who becomes manager of the family estate

* 3 That debt which has been contracted by an undivided paternal uncle brother, or mother for the benefit of the household must be discharged wholly by the heirs

* 4 If a debt has been legitimately inherited by the sons and left unpaid by them such debt of the grandfather must be discharged by his grandsons The liability for it does not include the fourth in descent

5 Fathers wish to have sons on their own account thinking in their minds, He will release me from all obligations towards superior and inferior beings

3 A debt contracted for the household by an unseparated paternal uncle or brother or by the mother must be paid by all the heirs If they are separate in affairs they must pay for it according to their shares If they live in union of interests, they must repay it in common A

2 3 Mann VIII 166 Vishnu VI 27 35 36 Yâgñavalkya II 45 50

4 A proposes an explanation of this paragraph which is not in accordance with its literal meaning and decidedly opposed to the principles of a sound method of interpretation He says that the term grandsons must be taken to relate to the grandsons of the debtor's sons i.e. to the great grandsons of the debtor and that the term the fourth descendant signifies the fourth in descent from the debtor's sons, i.e. the fifth in descent from the debtor himself This assumption, he says is necessary in order to reconcile the present rule with the statements of all other legislators and with Nârada's own rule (par 6) Vishnu VI 27 28 Yâgñavalkya II 50

5 A uses this paragraph in support of his theory that the obligation to pay the debts of an ancestor extends to the fourth in descent As the great-grandson has to discharge the debt to superior beings, i.e. as he has to offer the customary Srâddhas to his great-grandfather so he is liable for debts contracted by him, which have not been repaid

6 Three deceased (ancestors) must be worshipped three must be revered before the rest These

6 Three deceased ancestors i.e. the father, grandfather and great grandfather may claim the discharge of their terrestrial and celestial liabilities from the fourth in descent This rule is illustrated by the history of an action which was brought before a court in Patna A merchant of the Brahman caste by the name of Śrīdhara, had lent the whole of his wealth consisting of 10 000 drammas (drachmas) which he had gained through great labour to a trader by the name of Devadhara on condition that interest amounting to two per cent per mensem of the principal stock should be paid to him The interest was duly paid to Śrīdhara at the end of the first month In the second month however Devadhara met his death through an accident His son died of an attack of cholera Devadhara's great grandson alone was left His name was Mahīdhara As he was addicted to licentious courses, the management of the estate was undertaken by his sons and maternal uncles They got into the hands of a cunning Brahman called Smārtadurdhara, who advised them not to pay a single rupee to Śrīdhara, as he was able to prove from the law books that he had no claim to the money The uncles of Mahīdhara, much pleased with this piece of advice, promised to give 1 000 drammas to the Brahman if they need not pay the money to Śrīdhara Thus when at the close of the second month the uncles and guardians of Devadhara's great grandson Mahīdhara were asked by Śrīdhara to pay 200 drammas being the amount of interest due on the sum lent to Devadhara they refused payment They said We do not owe you the principal much less any amount of interest The Brahman Smārtadurdhara has pointed out to us that the obligation to pay stops with the fourth in descent Śrīdhara was struck dumb with grief and terror on hearing this announcement made to him When he had regained his senses he repaired to the court of justice attended by his family friends and servants and impeached Mahīdhara, together with his uncles for their dishonesty Both parties took sureties The uncles of Mahīdhara engaged Smārtadurdhara to plead for them After pretending his clients to be connected with his family by a friendship of long standing he went on to refer to a text of Nārada (above par 4) as proving that the obligation to pay the debts of ancestors stops with the fourth in descent All his arguments, however were refuted and held out to derision by a learned

three ancestors of a man may claim the discharge of their twofold debt from the fourth in descent

* 7 If a man fails to pay on demand what had been borrowed or promised by him, that sum (together with the interest) goes on growing till it amounts to a hundred krores (= one milliard)

* 8 A hundred krores having been completed, he is born again, in every successive existence in his (creditor's) house as his slave, in order to repay the debt (by his labour)

* 9 If an ascetic or an Agnihotrî dies without

Brahman, by the name of Smârtasekhara who at the end of his address charged him openly with having taken a bribe from his clients. The consequence was that Mahîdhara and his uncles lost their cause. A I have quoted this story in full, because it presents a vivid picture of the way in which judicial proceedings used to be transacted in ancient India. The doctrine which the story is intended to illustrate viz that the liability to pay debts contracted by an ancestor extends to the great grandson is opposed to the teaching of such an eminent authority as Viçñânesvara who maintains in the Mitaksharâ that the great grandson is not liable for debts contracted by his great grandfather and conversely that he does not inherit his property. See the author's Tagore Law Lectures (Calcutta 1885). The same opinion was apparently held by the author of the Nârada smṛiti, as may be gathered from par 4 and by other Smṛiti writers. It appears quite probable that the present paragraph, which is not quoted in any of the standard compilations on civil law may have been inserted by the author of the commentary who wanted to make the contents of the Nârada smṛiti agree with his personal views. The shorter recension and the quotations instead of the present paragraph exhibit another paragraph in which the obligation of the son only to release his father from debt is inculcated.

7 This paragraph has been translated according to the explanation given in Vîramitrodaya, p 358

9 The ample heavenly reward due to an Agnihotrî i.e. one who has kept the three sacred fires from the date of his birth or who has practised austerities without interruption shall belong to the creditor and not to the debtor. A.

having discharged his debt the whole merit collected by his austerities and by his Agnihotra belongs to his creditors

* 10 A father must not pay the debt of his son but a son must pay a debt contracted by his father excepting those debts which have been contracted from love, anger for spirituous liquor games or bailments

* 11 Such debts of a son as have been contracted by him by his father's order, or for the maintenance of the family or in a precarious situation must be paid by the father

* 12 What has been spent for the household by a pupil apprentice slave woman menial or agent must be paid by the head of the household

13 When the debtor is dead, and the expense has been incurred for the benefit of the family, the debt must be repaid by his relations even though they be separated from him in interests.

10 11 A debt contracted by one blinded by love or incensed by wrath against his own son, or in an outrageous state of intoxication or mad with gambling or who has become surety for another must not be paid by the son. If however a debt has been contracted even by the son for the benefit of the household or in a dangerous situation, it is binding on the father A According to Katyâyana a debt contracted from love is a promise made to a dissolute woman and a debt contracted from anger is a reward promised by an angry man to a ruffian for injuring the person or estate of his enemy A debt contracted in a precarious situation, i e a debt contracted in danger of life A Yâgñavalkya II 45 46 47 Vishnu VI 33 39

12 A pupil, one engaged in studying science An apprentice a pupil who resides with his preceptor for a certain fixed period A slave whether born in the house or purchased A Vishnu VI 39

13 Where the debtor has gone abroad and met his death through illness or accident, the debtor may claim his due from his relatives should they even be separated in interests. A.

* 14 The father uncle or eldest brother having gone abroad the son (or nephew or younger brother) is not bound to pay his debt before the lapse of twenty years

* 15 Every single coparcener is liable for debts contracted by another coparcener, if they were contracted while the coparceners were alive and unseparated But after their death the son of one is not bound to pay the debt of another

* 16 The wife must not pay a debt contracted by her husband nor one contracted by her son, except if it had been promised by her, or contracted in common with her husband

* 17 A sonless widow and one who has been enjoined by her dying husband (to pay his debt) must pay it Or (it must be paid) by him who inherits the

14 Necessary debts such as those enumerated in paragraph 11 must be paid at once by the other family members Where however the father uncle or eldest brother resides abroad and is known to be alive the son &c need not pay his debt till after the lapse of twenty years A Vishnu VI 27 Yagnavalkya II 50

15 After the death of those who have contracted the debt jointly the son of one is not bound to pay the debt of another than his father His liability does not extend beyond his father's share of the debt A Vishnu VI 34 Yagnavalkya II 45

16 A woman need not pay a debt contracted by her son unless she has promised herself to repay it Similarly she is not bound to pay a debt contracted by her husband unless she should have contracted it jointly with him or if he should have enjoined her on his deathbed to pay his debts or if she has inherited his property A Vishnu VI 31 38 Yagnavalkya II 46 49

17 A widowed woman who has no son is bound to pay the debt of her husband if he has commissioned her to do so on his deathbed or if his property has escheated to her If she is unfit to take the estate her husband's debt must be repaid by those who have inherited the estate The property and the liabilities go together A Vishnu VI 29 Yagnavalkya II 51 &c.

estate (For) the liability for the debts goes together with the right of succession

* 18 A debt contracted by the wife shall never bind the husband unless it had been contracted at a time when the husband was in distress Household expenses are indispensably necessary

* 19 The wives of washermen huntsmen, cowherds, and distillers of spirituous liquor are exempt from this rule The income of these men depends on their wives and the household expenses have also to be defrayed by the wives

* 20 If a woman who has a son forsakes her son and goes to live with another man that man shall take her (separate) property If she has no property of her own, her son (shall take the property of her husband)

* 21 If however a woman repairs to another

18 A debt contracted by the wife for the purpose of saving from distress her husband son daughter, or other family members must be discharged by the family head A Vishnu VI 32 &c

19 Yâgñavalkya II 48 Vishnu VI 37

20 If a widow who has a son, blinded by love forsakes her son and betakes herself to another husband taking her Stridhana (separate property) with her the Stridhana shall belong to her second husband, and not to her sons If however a woman who has no separate property goes to live with another man and takes her first husband's property with her, it shall not belong to the second husband It shall escheat to her son by the first husband A This interpretation has been followed in the text It is hardly reasonable however to explain the term dravya in the first instance as denoting Stridhana and then again as denoting property inherited from the husband It would seem that the reading adopted by Asahâya is erroneous The Viramitrodaya and other compilations read *nam* for *dravyam* (the son) must pay the whole debt if she has no property of her own. Vishnu VI 30 Yâgñavalkya II 51

21 If a widow who has a young son takes her de d hus

man carrying her riches and offspring with her that man must pay the debt contracted by her husband or he must abandon her

* 22 He who has intercourse with the wife of a dead man who has neither wealth nor a son, shall have to pay the debt of her husband because she is considered as his property

* 23 Among these three, the heir of the wealth the protector of the widow and the son he is liable for the debts who takes the wealth The son is liable on failure of a (protector of the) widow and of an heir, the protector of the widow on failure of an heir and of a son

* 24 Debts contracted by the husbands of the last

band's property and goes to live with another man the latter is bound to pay the debts contracted by her first husband His conduct is unimpeachable likewise if he lets her go she taking the whole of her property with her A

23 This rule contains the answer to the question Who is liable for the debts of a deceased person whose property has been taken by his heirs, whilst his wife through poverty has acceded to another man and whilst his son remains both penniless and deprived of the protection of his mother? The decision is as follows Between those three the heir of the wealth and no other is liable for the debt Where however there is no heir owing to the want of assets there the son is liable if there is no widow and the widow's husband, if there is no son The respective liability of the son and of the taker of the widow depends on the circumstances of the case If the widow is a young and handsome woman of high origin her second husband has to discharge the debt of her first husband according to the maxim that she is considered as his property (see above paragraph 22) If however she is kept like a handmaid and receives a mere livelihood from the man who has taken her the son is bound to pay the debt A Yagñavalkya II 51

24 The term *uttamâ* 'the first' besides its ordinary meaning conveys a secondary meaning It implies that when any of the seven *Svairinîs* and *Punarbhûs* happens to be specially handsome or

Svairinī and of the first Punarbhū, must be paid by him who lives with them

25 A wife a daughter in law a woman entitled to maintenance and the attendants of the wife by these have debts to be paid as also by one who lives on the produce of land (inherited from the debtor)

[If among such brothers as have come to a division and are separate in wives, affairs and wealth one should die without leaving issue his wife inherits his wealth]

2 Valid and Invalid Transactions

26 The sages declare that the transactions of a woman have no validity especially the gift, hypothecation or sale of a house or field

27 Such transactions are valid when they are sanctioned by the husband or on failure of the husband by the son or on failure of husband and son by the king

* 28 What has been given to a wife by her loving

gifted her second husband is bound to pay the debts contracted by the first A This no doubt is a highly artificial interpretation A definition of the seven Punarbhūs and Svairinīs is given further on XII 46-53 A refers to XII 48 and 52 However the meaning of the term the first Punarbhū is defined in XII 46 The Mitakshara (p 77) and Vīramitrodayā (p 347) explain the term the last of the Svairinīs as referring to one who overwhelmed with distress delivers herself to another man See XII 51 and note

25 b This paragraph which contains a rule relative to the law of inheritance seems to be a marginal gloss which has somehow crept into the text by mistake

28 Immovables such as houses fields and the like A This rule is frequently quoted in the mediaeval and modern compilations on the law of inheritance as indicating the extent of a woman's power over her property

husband that she may spend or give away as she likes after his death even, excepting immovables

* 29 In the same way the transactions of a slave are declared invalid unless they have been sanctioned by his master A slave is not his own master

* 30 If a son has transacted any business without authorization from his father it is also declared an invalid transaction A slave and a son are equal in that respect

* 31 A youth who, though independent has not yet arrived at years of discretion is not capable of contracting valid debts (Real) independence belongs to the eldest son (only) (the right of) seniority is based on both capacity and age

* 32 Three persons are independent in this world a king a spiritual teacher and in all castes successively a householder in his own household

* 33 All subjects are dependent the ruler of the country is independent a student is pronounced to be dependent, independence belongs to the teacher

30 A son who has not come to a partition of the family estate with his father continues dependent on him till the father dies A

31 This rule constitutes an exception to the general independence of the son after the death of his father During the period of his minority he is unable to contract a valid debt A The rule that seniority is based both on capacity and age is certainly remarkable It is however, in accordance with the view enounced further on (XIII 5) by Nārada that the management of the family property may be undertaken by the youngest brother even if capable because the prosperity of a family depends on ability

32 The king is independent of his subjects A teacher is independent of his pupils The head of a household is independent of his family and attendants A

33 34 These two paragraphs are intended to show the respective dependence and independence of wives, sons, householders, &c A

* 34 Wives sons slaves and other attendants are dependent The head of the family to whom the property has descended by right of inheritance is independent with regard to it

* 35 A child is comparable to an embryo up to his eighth year A youth who has not yet reached the age of sixteen is called *Poganda*

* 36 Afterwards he is no longer a minor and independent, in case his parents are dead While they are alive he can never acquire independence even though he may have reached a mature age

* 37 Of the two (parents), the father has the greater authority because the seed is superior (to the womb) on failure of the begetter, the mother on failure of the mother the eldest son

* 38 All these persons are independent at all times of those who depend on others They have

34 Colebrooke (Dig II 1 10) has translated a different reading of paragraph 34 thus A householder is not uncontrolled in regard to what has descended from an ancestor See as to the distinction between inherited and self acquired wealth *Yâgñavalkya* II 121

35 Comparable to an embryo is one who is not yet allowed to perform purificatory and other rites From his eighth year onwards a boy may perform purificatory ceremonies and commence sacred study He is called *Poganda* (a young man) because he is not yet capable of transacting legal business A This rule of *Nârada* has become the foundation of the modern law regarding the duration of minority A controversy has recently arisen as to whether minority terminates at the end or at the beginning of the sixteenth year Most if not all Indian writers seem to agree in taking the latter view A seems to be of the same opinion though he does not express himself very clearly

36 He remains dependent during the lifetime of his parents i.e. if he continues to live in union of interests with them A

38 Coercion i.e. punishment or beating relinquishment, i.e. renouncing A.

authority in regard to coercion the relinquishment and the sale (of property)

* 39 If a boy or one who possesses no independence transacts anything it is declared an invalid transaction by persons acquainted with the law

* 40 That also which an independent person does, who has lost the control over his actions is declared an invalid transaction on account of his want of (real) independence

* 41 Those are declared to have lost the control over their actions who are actuated by love or anger or tormented (by an illness) or oppressed by fear or misfortune, or biassed by friendship or hatred

42 That is declared a valid transaction which is done by the senior or head of a family and by one who has not lost the control over his actions That is not valid which has been transacted by one who does not enjoy independence

3 Property

43 All transactions depend on wealth In order to acquire it, exertion is necessary To preserve it

39 Both what a minor does and the transactions of one grown up but dependent on others as e g of a slave are declared invalid by those conversant with law A

40 One who has lost the control over his actions i e one whose natural disposition has been perverted owing to possession by a demon or to his addiction to gambling or other vicious propensities A

42 Here ends the second section of the law of debt, which treats of valid and invalid transactions A

43 'All transactions whether originating in virtue interest or love The rule regarding the acquisition (and enjoyment) of wealth is said to be threefold protection against b peds quadrupeds

to increase it and to enjoy it these are successively the three sorts of activity in regard to wealth

44 Again wealth is of three kinds white spotted and black Each of these (three) kinds has seven subdivisions

*45 White wealth is (of the following seven sorts) what is acquired by sacred knowledge valour in arms the practice of austerities with a maiden through (instructing) a pupil by sacrificing and by inheritance The gain to be derived from exerting oneself to acquire it is of the same description

*46 Spotted wealth is (of the following seven sorts) what is acquired by lending money at interest tillage commerce in the shape of Sulka by artistic performances, by servile attendance or as a return for a benefit conferred on some one

*47 Black wealth is (of the following seven

&c increase through agriculture lending at interest trading and other modes of acquisition enjoyment of terrestrial and celestial pleasures A

44-54 Vishnu chapter LVIII

45 What is acquired by sacred knowledge i.e. the gains of sacred study What is gained by the practice of austerities i.e. by one who duly performs greater and minor observances optional and regular rites and on whom worthy people bestow alms for that reason What is received with a maiden, i.e. as her marriage portion The fruit derived from relinquishing white property is of the same kind i.e. it is pure likewise Thus A

46 'Commerce the sale of merchandise Sulka the price obtained for giving a damsel in marriage whether the transaction be lawful or otherwise 'Artistic performances the art of painting or another art Servile attendance waiting upon and paying homage to another man Wealth obtained by one of these seven modes is called spotted i.e. of a middling kind A Others explain the ambiguous term Sulka differently as denoting tolls or a fare for crossing a river &c

47 Gambling with dice or otherwise. One afflicted with

sorts) what is acquired as a bribe, by gambling by bearing a message through one afflicted with pain by forgery, by robbery or by fraud

48 It is in wealth that purchase, sale gift receipt, transactions of every kind, and enjoyment have their source

49 Of whatever description the property may be with which a man performs any transaction of the same description will the fruit be which he derives from it in the next world and in this

50 Wealth is again declared to be of twelve sorts according to the caste of the acquirer Those modes of acquisition, which are common to all castes are threefold The others are said to be ninefold

51 Property obtained by inheritance gifts made from love and what has been obtained with a wife (as her dowry) these are the three sorts of pure wealth for all (castes) without distinction

52 The pure wealth peculiar to a Brahman is

pain one pained by an attack of disease Forging falsification of gold, silver or other metals Robbery such as theft Fraud deception What has been acquired by one of these seven kinds is called black wealth i.e. wealth of the lowest kind A

48 From these three kinds of wealth with their twenty-one subdivisions spring all the various kinds of transactions and all kinds of enjoyment A

49 The difference between this and the previous classification of the divers modes of acquisition seems to lie in this that the one system of classification is solely based on the respective legitimacy or illegitimacy of each mode of acquisition whereas the diversity of caste represents the principle of classification in the other system It should be borne in mind that an occupation, according to Indian notions, may be perfectly lawful for one caste though it is unlawful for all others

52-54 Manus I 88-91 X 74-80 Yāgyavalkya II 118-120 Vishnu II, 4-14 Āpastamba I 1 1 5-6, Gautama X, 2, 7 49 56, Vasishtha II 13 20 Baudhāyana I 18 1 5.

declared to be threefold what has been obtained as alms, by sacrificing and through (instructing) a pupil

53 The pure wealth peculiar to a Kshatriya is of three sorts likewise what has been obtained in the shape of taxes by fighting and by means of the fines declared in lawsuits

54 The pure wealth peculiar to a Vaisya is also declared to be threefold (what has been acquired) by tillage, by tending cows and by commerce For a Sûdra it consists of what is given to him by the members of the three higher castes

55 These are the legitimate modes of acquisition of wealth for all the (four) castes severally If one caste should take to the occupations of another caste, it is a criminal proceeding except in extreme cases of distress

4 Means of Livelihood for a Brahman in Times of Distress

56 In times of distress, a Brahman is allowed to gain his substance in the mode prescribed for the caste next to him in rank, or he may gain his substance like a Vaisya But he must never resort to

55 Here ends the section of the divers kinds of wealth in the law of debt A

56 The class next to him in rank i e the Kshatriya or warrior caste If he should find himself unable to support his family by the mode of livelihood of his own caste he may gain his substance like a Kshatriya At the time of a drought or famine he may gain his substance like a Vaisya even The lowest caste i e the Sudra caste A. Manu X, 81 82, Vishnu II 15 Yâgñya valkya III 35 Ga VII 6 Baudhâyana II 4 16 &c.

the mode of livelihood prescribed for a member of the lowest caste

57 At no time must a Brahman follow the occupations of a man of vile caste or a vile man the occupations of a Brahman. In either case expulsion from caste would be the immediate consequence.

* 58 For neither of them are such occupations permitted as are either far above or far below their own rank. Those two occupations are lawful for them which lie between these two extremes for they are common to all (castes).

59 When a Brahman has lived through the times of distress with the wealth acquired by following the occupations of a Kshatriya he must perform a penance and relinquish the occupations of a Kshatriya.

60 When however a Brahman takes delight in those occupations and persists in them, he is declared a *Kāṇḍaprishtha* (professional soldier) and must be expelled from society, because he has swerved from the path of duty.

57 By the term a vile man a member of the *Sūdra* caste is referred to. The occupations of such a man i.e. the acceptance of food from everybody and the sale of all sorts of commodities must never be resorted to by a Brahman even in times of distress. And so must a *Sūdra* avoid the occupation of a Brahman such as wearing the sacred thread, study of the Vedas, pronouncing sacred benedictions, offering burnt oblations and the rest. A.

58 Such occupations as are either far above or far below their own rank i.e. the occupations of a Brahman and of a *Sūdra* respectively. Those two occupations i.e. those peculiar to the Kshatriya and Vaisya. A hitvā seems a faulty reading (for hite).

59 Yāgñavalkya III, 35

60 'Ejected from society' i.e. he must not be admitted to obsequial repasts and other religious ceremonies. A.

61 When a Brahman is living by the occupations of a Vaisya he must never sell milk sour milk clarified butter honey beeswax lac pungent condiments liquids used for flavouring spirituous liquor

62 Meat boiled rice sesamum linen the juice of the Soma plant flowers fruit precious stones men poison weapons water salt cakes plants

63 Garments silk skins bone blankets made of the hair of the mountain goat animals whose foot is not cloven earthen pots, buttermilk, hair dregs vegetables fresh ginger and herbs

64 A Brahman may sell dry wood and (dry) grass excepting fragrant substances Erakâ grass ratan mulberry roots and Kusa grass

65 (He may sell) twigs of bamboo that have fallen spontaneously of fruits the fruits of the jujube tree

61-66 *Manu* X 85-90, *Yâgñavalkya* III 36-39 *Gautama* VII, 8-22, *Vasishṭha* II 24-31 *Âpastamba* I 7 20 11 foll

61 Pungent condiments such as sugar Liquids such as clarified butter and oil A

62 A explains the term Soma, the juice of the Soma plant which is offered to the gods at a sacrifice as denoting sacrificial implements generally men i.e. servants plants i.e. shrubs creeping plants and others A.

63 Blankets i.e. what is made of wool Animals whose foot is not cloven i.e. whole-hoofed animals such as horses Dregs i.e. the deposit of oil. Vegetables i.e. fresh pot herbs A

64 'Fragrant substances, such as the fragrant root of the plant *Andropogon Muricatus* Balaka the root of the *Musta* grass and others A If the reading of a single MS be followed the sale of the articles enumerated in pars 64 and 65 is also prohibited for a Brahman Several of these articles are included among those substances the sale of which is prohibited by other legislators See *Manu* X 86-89 *Yâgñavalkya* III 36-39 However the reading translated above is distinctly supported by the Commentary of *Asahâya*, and by the analogous rules of *Vasishṭha*.

and of the Inguda plant ropes and thread of cotton if its shape has not been altered (by working it up)

66 If it is for a medicament used to cure a disease, or for an offering or if necessity can be shown he may sell sesamum for a corresponding quantity of grain

67 A Brahman who swerves from the path of duty by selling prohibited articles must be reminded of his duty by the king by inflicting a severe chastisement on him

5 Modes of Proof

* 68 Those invested with legal authority must pay strict attention to the (various) modes of proof That even which is provable fails to be proved, if the (prescribed) modes of proof are not attended to

69 Documents witnesses, and possession are the traditional three means of proof by which a creditor endeavouring to recover his loan may obtain what he has lent

70 If the Creator had not created writing as an

69 The term *pramana* which has been translated means of proof is both a philosophical and a law term A explains it etymologically as denoting anything which may be known or discerned accurately Thus what is counted or reckoned, may be known by figures What is capable of measurement may be known by its measure Similarly where a lawsuit is pending, the truth may be known by having recourse to one of the ordinary modes of proof viz documents witnesses possession, and ordeals Therefore, these means of proof should be duly applied by holy men, kings and assessors of the court and others endowed with legal authority, because that which is doubtful cannot be proved otherwise

70 The term documents in this section seems to relate principally to the well-known land grants which have been found in many

excellent eye (as it were) the affairs of this whole world would not take their proper course

71 Writing is an excellent eye (as it were) because it solves all doubts which may have arisen in regard to place time profit matter quantity or stipulated period

72 He who, having received a chattel in a certain place tries to deny the fact, is liable to be confronted with witnesses and convicted difficult as it may be to prove his guilt

73 A document is subject to many blemishes witnesses are neither exempt from old age nor from death possession which has been continually held is the only sure mode of proof, as it is not connected with any material object (liable to decay)

74 Thus have these three modes of proof been declared by means of which a creditor may recover an outstanding debt which has not been paid to him and called into doubt (by the debtor)

75 A document is valid at all times witnesses (may give valid evidence) as long as they live possession acquires legal validity through the lapse of a certain period This is a legal maxim

parts of India Yâgñavalkya II 22, Vishnu VI 23 Vasishtha XVI 10

75 Witnesses can give evidence while they live only whereas a document which has been carefully preserved remains evidence even after the death of the creditor debtor and witnesses and is capable of substantiating a claim raised by the son grandson great-grandson or more remote descendant of the original owner On the other hand, even after a lapse of time i.e. when four or five generations have passed away and an immeasurable period has elapsed, a creditor may recover his loan by dint of uninterrupted possession This is a legal maxim i.e. this is the relative value of the divers kinds of proof A

76 Of the three modes of proof here enumerated in order each previous one is superior to the one named after it but possession is the most decisive of all

* 77 Though a document be in existence and witnesses living that is no (true) property of which possession is not actually held This is specially true as regards immovables

* 78 If a man is foolish enough to allow his goods to be enjoyed by strangers in his own eyesight, they shall belong to the possessor even in the presence and during the lifetime of the rightful owner

* 79 Whatever the owner looking on quietly suffers to be enjoyed by strangers for ten years,

76 The apparent contradiction between the first and second parts of this paragraph is thus removed by A Possession of immovables without a title does not create proprietary right as stated in par 84 Therefore the possessor of landed property becomes its lawful owner if his right or title is established by witnesses but not otherwise Thus far possession is more important than witnesses In the same way documents with a title are superior to witnesses, and possession with a title is superior to witnesses documents and ordeals

77 This paragraph is intended to show the weakness of proof by witnesses or documents where it is not accompanied by possession Generally speaking any of the three kinds of proof is invalid where it is not accompanied by one of the other kinds A *Yâgñia valkya* II 27, *Manu* VIII 200

78 If a man suffers his movable or immovable property to be enjoyed by another, the latter will become its lawful owner after the lapse of a long period no matter whether it has been bestowed on him through affection, or forcibly seized by him, or abandoned by its previous owner A

79 Where however the owner though unable to recover his property owing to special reasons, proffers his claim to it every day or every month or every year it is not lost to him even after the lapse of a longer period than ten years A Identical with *Manu* VIII 147

though he is present that cannot be recovered by him

80 If he is neither an idiot nor a minor and the enjoyment takes place before his eyes his right to it is extinct by law, and the possessor is allowed to keep it

*81 A pledge, a boundary the property of a child an open deposit, an Upanidhi deposit, women and what belongs to the king or to a learned Brahman none (of these descriptions of property) is lost (to the owner) by adverse possession

82 Pledges and the rest excepting the property of a woman and of the king are however lost to the owner if they have been enjoyed in his presence for twenty years

80 If he is not an idiot nor afflicted by a chronic or agonising disease nor dumb blind or deaf A Identical with Manu VIII 148

81 The property of children is not lost though it has been enjoyed for a long time by their guardian An Upanidhi deposit i.e. a valuable article which has been delivered under cover to another person. A woman one who has been delivered to a stranger as a deposit and enjoyed by him The property of a king i.e. land The property of a learned Brahman i.e. cows A Kullûka in commenting on the identical verse of Manu refers the term woman to female slaves &c The rules laid down in pars 79-81 which recur literally in the code of Manu seem to belong to an older order of ideas than those contained in pars 84 foll It may be presumed that the harsh law under which adverse possession of ten years standing was constituted a source of proprietary right was mitigated at a subsequent period and has been inserted here as a sort of historical reminiscence only According to Bṛhaspati thirty years is the ordinary period of prescription Identical with Manu VIII 149 Vasishṭha XVI, 18

82 In this paragraph as in the preceding one the term a king's property is referred to landed property by A The correctness of this interpretation seems questionable

* 83 The property of a woman and of a king is never lost (to the owner) should it even have been enjoyed for hundreds of years without a title (by strangers)

84 Where there is enjoyment, but no title of any sort, there a title is required in order to produce proprietary right Possession is not sufficient to create proprietary right in that case

* 85 A clear title having been produced possession acquires validity Possession without a clear title does not make evidence (of ownership)

* 86 He who can only plead possession without being able to adduce any title has to be considered as a thief in consequence of his pleading such illegitimate possession

* 87 He who enjoys without a title for ever so many hundred years, the ruler of the land should inflict on that sinful man the punishment ordained for a thief

* 88 If a man holds the property of a stranger without a title it is not legitimate enjoyment. However after the death of the occupant it may be enjoyed legitimately by his descendants

* 89 In cases falling within the memory of man

88 While the possessor is alive the property which he is enjoying without a title cannot become his The owner may claim it at any time When, however the possessor dies unmolested by the owner the property continues to be enjoyed by his heirs Therefore the owner should not fail to assert his own right A

89 The Mitaksharâ explains the term what falls within the memory of man as denoting a period of 100 years in accordance with a text from the Veda The life of men extends over a hundred years If this explanation be correct the present rule agrees in substance with the rule laid down in 89 b and 91 a period of a hundred years being about equal in duration to three lives It s

possession with a title creates ownership In cases extending beyond the memory of man, and on failure of documents the hereditary succession of three ancestors (has the same effect)

* 90 If the occupant is impeached (by the legitimate owner) he cannot escape defeat (without refuting the charge) That possession only can create proprietary right, which has been legitimately inherited from the father

* 91 When possession has been successively held even unlawfully by the three ancestors of the father (of the present possessor), the property cannot be taken away from him because it has gone through three lives in order

* 92 What has been deposited with a third person to be delivered ultimately to the owner (Anvâhita) stolen goods ordinary deposits what is held by force loans for use, and what is being enjoyed during the absence of the owner these are six (things possessed) without a title

true that another legislator Vyâsa mentions sixty years as the duration of continued possession extending over three generations

90 If the owner claims his own property from the possessor the former has to make good his claim That enjoyment however which has passed from the father to the sons by right of inheritance constitutes a legal title for them A. Yâgñavalkya II 28

91 If the great great grandfather has held possession be it even without a title of a certain thing and if it has been enjoyed, after his death by the great grandfather and by the grandfather it cannot be claimed from the father by any one Vishnu V 187

92 The term Anvâhita is usually explained like Anvadhî, as denoting what has been deposited with a third person to be delivered ultimately to the owner A however explains Anvâhita as denoting a valuable object received from another in exchange for a worthless article

* 93 If a litigant dies before a lawsuit (regarding property enjoyed by him) has been decided the son is required to prove his title The enjoyment is not legitimate (otherwise)

* 94 After the death of a creditor witnesses though available cannot give valid evidence except if a statement made by the creditor himself on his deathbed (has been preserved)

95 After the death of the defendant the deposition of witnesses ceases to make evidence An attested document retains its validity during his life time only

* 96 Where a pious act is announced by a diseased

93 Supposing a man were to have obtained possession of the property of a stranger by one of the previously mentioned illegitimate modes of acquisition if the rightful owner were to impeach him for it and if the possessor were to die before the case has been decided in that case the son would have to substantiate his claim and would not be allowed to continue his enjoyment of the property without doing so A *Yâgnavalkya* II, 29

94 A man says after the death of his creditor I have restored this or that cow female buffalo bull or field to my creditor certain honest men have witnessed the transaction Another man says Your father owes me one hundred drachmas certain persons have witnessed the transaction He dies however before his claim has been examined In either of these two cases trustworthy witnesses even are of no avail If however the creditor has stated his claim before witnesses on his deathbed or if a man has given evidence as witness on his deathbed regarding a certain loan about which the creditor has asked him the testimony of the witnesses has to be considered as valid even after his death A

95 The defendant i.e. the debtor An attested document is valid while he lives only It loses its validity after his death A

96 When a diseased father has stated his intentions regarding a religious endowment or other matters of this kind during the absence of his sons but in the presence of witnesses the deposition of the latter will be valid even after his death Similarly when a man

man, the testimony of the witnesses retains its validity even after his death. The case is the same with the six (things possessed without a title) viz an Anvahita deposit and the rest

97 In all transactions relative to a debt or to any other (among the eighteen titles of law) the last act is the decisive one. In the case of a gift, a pledge, or a purchase, the prior act settles the matter

6 Lending Money at Interest

*98 A contract of delivery and receipt may be made with a view to the profit arising from Sthâna. It is called Kusîda (lending money at interest) and money lenders make a living by it

during an attack of illness repents of his former act and declares before witnesses that he has deposited with a friend a worthless object in exchange for a valuable one and wishes to restore the former or that he has stolen something and wishes to restore it to the owner, or that he wishes to restore a deposit which had been delivered to him by the owner or that he intends to make restoration of what he had obtained by forcible means, or of a loan for use, or of what he had been enjoying in secret in any one out of these six cases the deposition of the witnesses is valid even after his death. A. See par 92 and note

97 In all the eighteen titles of law beginning with the law of debt, the latest act is considered decisive. The law is different in cases of acceptance where e.g. a village belongs to him who has been the first to receive it in the case of a pledge or mortgage and in the case of a purchase where the pledge or mortgage, and the article sold belong likewise to the first taker. A. Nearly identical with Yagñavalkya II 23

98 According to A. Sthâna continued abode may be three fold relating to the matter as when profit arises from (the continuance of) victuals remaining well kept in a certain place or relating to one's own abode as when a dealer derives profit from business transactions in his own country or relating to a different place as when a dealer earns money through foreign trade

* 99 Let a money lender take in addition to the principal, the interest fixed by *Vasishtha* viz an eightieth part of a hundred in every month

* 100 Two three four or five (in the hundred) is the legitimate (rate of interest) Let him take as much in the shape of interest, every month in the direct order of the (four) castes

* 101 Or let him take two in the hundred, remembering the practice of the virtuous By taking two in the hundred, he does not commit the crime of covetousness

* 102 Interest is declared fourfold in this law-book periodical interest stipulated interest *kâyikâ* interest, and compound interest

* 103 That which runs by the month is termed

99 Identical with *Manu* VIII 140 This rule which fixes the rate of interest at $1\frac{1}{2}$ per cent by the month or 15 per cent. per annum is actually found in the *Dharmasûtra* of *Vasishtha* II 51

100 Identical with *Manu* VIII 142 The meaning is that he shall take 2 per cent from a Brahman 3 per cent from a Kshatriya, 4 per cent from a Vaisya and 5 per cent from a Sûdra A It appears from the commentaries on the code of *Manu* that the present rule is applicable in those cases where no security has been given whereas the preceding paragraph refers to loans secured by a pledge

101 Identical with *Manu* VIII 141 The meaning is that he shall take 2 per cent only from honest men to whatever caste they may belong A In the code of *Manu* the present rule precedes par 100 instead of following it The author of the *Nârada smṛiti* would seem to have erroneously inverted the original position of the two verses

102 *Manu* VIII 153 *Gautama* XII, 34 35 See too, *Colebrooke's Digest* I, XXXV-XLV

103 104 Periodical interest means monthly interest, at the rate of from 2 to 5 per cent according to the caste of the debtor Stipulated interest is interest at the rate of more than 10 per cent which has been promised by the debtor himself in times of great distress *Kâya* means principal. If a *Pana*, or quarter of a *Pana*, has to be

periodical interest That interest is termed stipulated interest which has been promised by the debtor himself

* 104 Interest at the rate of one Pana or quarter of a Pana paid regularly without diminishing the principal is denoted *kâyikâ* interest Interest upon interest is called compound interest

* 105 This is the general rule for interest to be paid on loans There are special rules according to the local usages of the country where the loan has been made

* 106 In some countries the loan may grow till twice the amount of the principal has been reached In other countries it may grow till it becomes three or four or eight times as large as the principal

107 The interest on gold grain, and clothes may rise till it amounts to two, three or four times the principal On liquids, the interest may become octuple of women and cattle their offspring (is considered as the interest)

paid every day without diminishing the principal i e if the whole principal has to be restored, though ever so much interest may have been paid on it it is called *kayikâ* interest Where interest at the rate of 5 per cent per mensem has been paid for twenty months it will reach the same amount as the sum originally due so that the principal is doubled After twenty months more it becomes quadruple twenty months later it becomes octuple, and so on This is called compound interest A Br̥haspati and Vyâsa derive the term *kayikâ* from *kaya* 'a body' and explain that it denotes bodily labour or the use of a pledged slave

105 Where local customs obtain differing from the rules previously given they have to be followed A

106 107 Manu VIII, 151 Vishnu VI 11-17, Yâgñavalkya II 39, Gautama XII 36

107 Gold borrowed at whatsoever rate of interest shall grow till it becomes double grain till it becomes treble cloth, till it becomes

*108 No interest must ever be raised on loans made from friendship unless there be an agreement to the purpose. Without an agreement even, interest accrues on such loans after the lapse of half a year.

*109 A loan made from friendship can never yield any interest, without being reclaimed by the creditor. If the debtor refuses to restore it on demand, it shall yield interest at the rate of five per cent.

7 Usurers

*110 Thus has the rule been declared for the interest to be paid on loans offered through friendship. If, however, interest be demanded on grain at the rate which has been mentioned, it is termed usury.

*111 A Vaisya is at liberty to get over a period of distress by practising usury. A Brahman must never resort to usury, not even in the extremity of distress.

quadruple, liquids (and condiments) till they become octuple. The offspring of pledged females and cattle shall belong to the creditor. A.

108 The chattels which have been mentioned in the preceding paragraph if lent in amicable intercourse shall not yield any interest before the expiration of six months without a special stipulation to that effect. Even without a stipulation to that effect, however, they shall yield interest after the lapse of six months. A.

109 A loan which is not restored, on demand even, shall yield interest at the rate of 5 per cent from that day forward even though six months are not yet over. A.

110 The term *karman* is sometimes used as an equivalent for gold. A. This interpretation has not been followed.

111 Agriculture, the tending of cattle, &c, are lawful occupations for a Vaisya. Lending money at interest is also permitted to him. Therefore it is said here that a Vaisya may practise usury in times of distress whereas a Brahman must not resort to usury even in times of overwhelming distress. A.

*112 If a debt is due to a (dead) Brahman creditor, whose issue is living, (it must be paid to them) If there be no issue the king must cause the debt to be paid to his kinsmen on failure of kinsmen (it must be paid) to his relatives

*113 Where there are neither kinsmen nor relatives nor distant connexions it shall be paid to (other) Brahmans On failure of such, he must cast it into the waters

*114 When a creditor receives payment, he must give a receipt for it to the debtor If he does not give a receipt, although he has been asked for it, he shall lose the remainder of the sum due to him

*115 If though pressed by the debtor he does not give an acquittance for the sum paid to him by the debtor that sum shall yield interest to the debtor (henceforth) as (it had done) to the creditor (previously)

112 Sakulya kinsman is derived from kulya, a bone and denotes those who have their bones in common (sic) i.e. a father a paternal uncle their sons and other (agnates) Bandhu, a relative denotes a mother a sister a sister's son and other (agnates) A

113 This paragraph is intended to show the pre eminence of the Brahman caste A

114 In Colebrooke's Digest (I 6 287) the second half of this paragraph is referred to a refusal on the part of the creditor to restore the money which the debtor had asked him for on his refusing to give a receipt This construction is based on the comment of Gagannâtha but it is not countenanced by the remarks of Asahâya and is thoroughly artificial Yâgnavalkya II, 93, Vishnu VI 26

115 If the creditor fails to receipt the sum which has been restored to him on the back of the document it shall yield interest to the debtor in the same way as it had yielded interest to the creditor previously A

*116 On payment of the debt he must restore the bond On failure of a bond, he must give a written receipt Thus the creditor and debtor will be quits

8 Sureties

*117 The guarantee to be offered to a creditor may be twofold a surety and a pledge A document and (the deposition of) witnesses are the two modes of proof on which evidence is founded

*118 For appearance, for payment, and for honesty, these are the three different purposes for which the three sorts of sureties have been mentioned by the sages

*119 If the debtors fail to discharge the debt or

116 Where the bond is no longer in existence because it has been stolen or destroyed or met with some calamity the creditor instead of it shall give a written receipt to the debtor Here ends the sixth section of the law of debt which treats of lending money at interest and of usurers A

117 A surety and a pledge are the two sorts of guarantee for a loan on interest Documents and witnesses are the two kinds of evidence for each of the four elements which have to be distinguished in the law of debt viz the principal, the interest, the surety, and the pledge A

118 A surety for appearance is where the debtor denies the debt and is asked to prove his denial in a court In that case, he must produce a man who becomes surety for the debtor's appearance at the time of the trial A surety for payment is where the creditor, anxious to obtain a loan, produces one or several sureties who are either jointly or severally bound A surety for honesty is where the debtor denies having received a certain sum or declares that he has restored it to the creditor and is required thereupon to produce a surety for his veracity A Yâgnavalkya II, 53, Vishnu VI, 41

119 This paragraph is intended to show that the surety for appearance and the surety for honesty are equally responsible as the

if they prove dishonest the surety (for payment and for honesty) must pay the debt, and (so must the surety for appearance), if he fails to produce the debtor

120 When there is a plurality of sureties, they shall pay each (proportionately), according to agreement. If they were bound severally, the payment shall be made (by any of them), as the creditor pleases

*121 Twice as much as the surety harassed by the creditor, has given (to the creditor), shall the debtor pay back to the surety

122 By the mode consonant with religion, by legal

surety for payment. A. Manus VIII, 158-160 Yâgñavalkya II 53, Vishnu VI, 41

120 Where a number of sureties have promised each to pay a certain stipulated share of the debt in case of the debtor's inability to discharge it himself the liability of each surety does not extend beyond what has been promised by him. Where however all the sureties have declared their joint liability for the whole debt, the creditor may enforce payment from any one among them whom he thinks able to satisfy his demand. A. Yâgñavalkya II 55, Vishnu VI 42

121 When however the surety anxious to obtain twice the amount of the sum for which he has given security should pay the sum to the creditor of his own accord without being pressed to do so by the creditor the debtor shall pay that sum only to him and not the double sum. A. Yâgñavalkya II 56 Vishnu VI 43

122 Identical with Manus VIII 49. According to Asahâya four out of the five modes of recovery of a debt are equivalent to the traditional four means of obtaining success viz conciliation, division (bheda) presents and violence. Thus the mode consonant with religion means conciliation, i.e. gentle remonstrances. If these should prove of no avail, legal proceedings or division (bheda) shall be resorted to i.e. the debtor shall be threatened with a plaint in a court of justice. After that 'presents or fraud should be adhibited, i.e. a false hope of fictitious gain shall be held out to the debtor. If this mode also should prove unsuccessful, force or violence

proceedings by fraud by the customary mode, and fifthly by force a creditor may recover what he has lent

*123 A creditor who tries to recover his loan from the debtor must not be checked by the king both for secular and religious reasons

9 Pledges

*124. That to which a title is given (*adhikriyate*) is called a pledge There are two kinds of it a

may be used by fettering the debtor or confining him, &c The fifth mode called the customary mode (*ākṛita*) consists of fasting If the creditor himself or his son, or his servant takes to fasting it is no offence or he may confine his own son or threaten to kill him, or seize the property of a stranger, as a compensation The commentators of the Code of Manu explain the five modes of recovery of a debt much in the same way as Asahaya 'Fraud according to them is when the creditor borrows money from the debtor under false pretences or retains a deposit belonging to him Vyayahara, generally interpreted by legal proceedings means according to Medhatithi engaging the debtor in agriculture trade or other work and taking the proceeds of his labour The customary mode (*ākṛita*) is variously explained as denoting fasting or killing or taking (one's own or the debtor's) family and cattle Under the former interpretation it is identical with the well-known sitting in Dharna. See the translations of Manu and Jolly Ind Schuldrecht § 7 For an interesting parallel to the custom of Dharna from the Brehon Laws of Ancient Ireland see Sir H Mame's Early History of Institutions p 297 foll

123 A dishonest debtor who applies to the king for protection against a creditor enforcing his demand shall not be abetted by the king For secular reasons, i e in order not to disturb the established order of society 'For religious reasons, i e in order not to offend against religious law A Nearly identical with Manu VIII 50 Vishnu VI 19 Yâgnavalkya II 40

124 According to Asahâya the pledge to be released within a specified time is again twofold It may be either deposited with a keeper of the pledge (*âdhîpâla*) who is to return it on the pledge

pledge which must be redeemed within a certain time, and a pledge which must be retained till the debt has been discharged

*125 A pledge is again twofold one to be kept only and a pledge for enjoyment It must be preserved precisely in the same condition (as at the time of its delivery) otherwise the pledgee loses interest

*126 The same thing happens when the pledge has been injured owing to the negligence of the pledgee If it has been lost, the principal is forfeited, provided that the loss was not caused by fate or the king

*127 A pledge (for custody) must not be used

being restored at the time agreed on Or it may be delivered to the creditor on condition of its being returned after the lapse of a certain period say five or ten years The usufruct of a pledge to be retained till the debt has been liquidated shall belong to the creditor for ever till the debt has been discharged.

125 Asahâya gives a house and a field as instances of a pledge for use By spoiling a pledge of this kind the pledgee forfeits interest, i e he loses the produce of a field the use of a dwelling place &c

126 'Negligence, with regard to a bull or other pledge for use means that it is used at an unseasonable time or too much for drawing a cart or carrying a burden With regard to a pledge for custody it means that it is abandoned. When it has been injured, as e g when an animal given as a pledge has lost one eye The king may cause the loss of the pledge if he confiscates the whole property of a man and the pledge together with it, on account of a slight offence The loss is caused by fate if e g a pledge is stolen by a thief A Yâgñavalkya II 59 Vishnu VI, 6

127 Identical with Manus VIII 144 According to Medhâtithi and Kulluka, the provision that the pledgee must make good the value of the pledge to the owner refers to those cases where the pledge has been injured or spoiled According to Nârâyana, whose opinion is apparently shared by Asahâya, it means that the pledgee

forcibly The pledgee who uses it forfeits the interest due to him Moreover he must make good the value (of the pledge) to the owner Otherwise he is (considered as) a thief of the pledge

128 That foolish person who uses a pledge without authorization from the owner, shall lose one half of his interest as a compensation for such use

129 If a pledge for enjoyment has been given, (the creditor) must not take interest on the loan Neither must he give or sell a pledge (of any sort) before the (stipulated) period has elapsed

*130 When a pledge, though carefully kept loses its value after a certain time (the debtor) must either give another pledge or discharge the debt to the debtor

*131 When a debtor has been disabled by a reverse of fortune (from paying the debt), he shall be made to discharge the debt gradually, according to his means, as he happens to gain property

*132 If a wealthy debtor from malice refuses to

must satisfy the owner of the pledge out of the profit derived from the use of the pledge

128 Nearly identical with Manu VIII 150 See Professor Buhler's note

129 'A pledge for enjoyment means one where the profit derived from the pledge takes the place of interest Such a pledge must not be given or sold before the term fixed for its delivery A

130 Yâgñavalkya II 60

131 Where the debtor is unable to give another pledge or to restore the loan he must be made to restore it successively as best he can, according to his receipts A Manu VIII 177 IX, 229, Yâgñavalkya II 43

132 The king shall take 5 per cent as a compensation for the assistance rendered by him A Manu VIII 139 Yâgñavalkya II 42 Vishnu VI 21

pay his debt the king shall compel him to pay it by forcible means and shall take five in the hundred for himself

133 If the debtor acknowledges the debt with his own mouth, the king shall take from him ten per cent (of the debt) as a fine, and twice as much (i.e. twenty per cent) if he has been convicted (after denial of the debt)

134 If the debtor, owing to a calamity, has not means sufficient to discharge the whole debt (the claim of the creditor) shall be entered in a legal document specifying the caste (of the creditor and debtor), their names and the names of their neighbours

10 Documents

* 135 Documents should be known to be of two sorts (the first) in the handwriting of the party him

133 If the debtor when impeached by the creditor acknowledges the debt himself the king shall take 10 per cent only. If however the debtor had undergone the trouble of proving the correctness of his demand against the creditor, the king shall take from him twice as much i.e. 20 per cent. A. Manu VIII 139, Yāgñavalkya II 42. Vishnu VI, 20, 21

134. If a debtor who has been cast in a suit has not means sufficient to discharge the whole debt he shall give a written bond. A. The meaning of the obscure terms *gāti*, *samgnā* *adhivāsa* may be gathered from a text of Br̥haspati which is quoted in Nandapandita's Vāgayantī (MS) III 74. There these three terms occur in an enumeration of ten points which have to be noticed in a written deed concerning landed property. According to Nandapandita *gāti* denotes the caste Brahmanical or other of the plaintiff and defendant, *samgnā* denotes their names as e.g. Devadatta. *adhivāsa* refers to the names of their neighbours.

135 A document in the handwriting of the party himself has the advantage of being valid without subscribing witnesses. The cus

self, (the second), in that of another person, (the former being valid) without subscribing witnesses the latter requiring to be attested. The validity of both depends on local usage.

*136 That document is said to be valid which is not adverse to the custom of the country the contents of which answer to the rules regarding pledges (and other kinds of security) and which is consistent in import and language.

*137 That document is invalid which has been executed by a person intoxicated by one charged (with a crime) by a woman or by a child, and that which has been caused to be written by forcible means by intimidation or by deception.

138 A bond ceases to be valid in that case also, if the witnesses creditor debtor and scribe be dead,

tom of the country i e the usages prevailing in each country with regard to the validity of documents is supreme. A. Vishnu VII 1-5 Yâgnavalkya II 84-88

136 I have translated the reading *vyaktâdhividhulakshanam*. That writing is not adverse to the custom of the country which does not record an invalid gift or a disposition in regard to a minor &c. If the contents of a document are in accordance with the rules regarding pledges sureties &c. and if its import and language is free from obscurity and breaks it is valid. A. Vishnu VII 11

137 What has been written by one intoxicated or charged with the murder of a Brahman or other heavy crime, or by a woman or child what has been caused to be written by forcible means the writer not being concerned in the subject matter and what has been written by one intimidated or under a delusion all such documents are invalid. A. Vishnu VII 6-10, Yâgnavalkya II 89

138 The invalidity of those documents, where the creditor, debtor, witnesses and writer are all dead, is declared for that reason, because such documents may be suspected of forgery. Even after the actual death of all those persons however a document retains its validity where a pledge is in existence and in the possession of the creditor. A.

unless its validity can be established by the existence of a pledge

*139 Pledges are declared to be of two kinds movable and immovable pledges, both are valid when there is (actual) enjoyment and not otherwise

*140 If a document has been produced in due time, if (the demand recorded in it) has been (repeatedly) urged and (publicly) proclaimed it remains valid for ever even after the death of the witnesses

141 A document which is unknown and has never been heard of before does not obtain validity when it is brought forward, even though the witnesses be living

*142 When a document has been transferred

139 A pledge which is only mentioned in a document without being actually enjoyed, has no legal validity A.

140 A document or bond which the descendants of the creditor have repeatedly shown to the descendants of the debtor whenever interest was due (*prārthitam*), or which they have again and again read out retains its validity for the respective descendants of the creditor and debtor even after the death of the witnesses and all other persons concerned A I have translated the term *prarthitam* as an independant clause

141 A document or bond the contents of which are unknown to the descendants of the debtor, about which they have never heard from their ancestors, and which has been suddenly presented to them only in a business transaction is not considered valid even though the witnesses be living A

142 This rule is equally applicable to a plaintiff and to a defendant in a lawsuit 1 If a creditor suing a debtor is unable to produce the bond on demand the judge shall give him time to search for it If the bond has been destroyed by fire or by some other accident, the fact of its former existence may be established by the testimony of honest persons who have acted as scribe or as subscribing witnesses or who happened to be present while the bond was being executed The statements of such persons are equally decisive where the marks or part of the writing in a document has been obliterated 2 A debtor having been asked n

into another country or burnt, or badly written or stolen a delay must be granted in case it should exist still if it be no longer in existence the evidence of those who have seen it decides the matter

143 If a doubt should subsist, as to whether a certain document be authentic or fabricated, its authenticity has to be established by examining the handwriting (of the party), the tenour of the document peculiar marks circumstantial evidence and the probabilities of the case

*144 If a document is signed by a stranger and

court to discharge a certain debt on the strength of a bond signed by himself says 'It is true I had written that document. However the money was not handed over to me and I omitted to cause the document to be torn because it did not happen to be at hand. A few days later the father of my would be creditor informed me that he had lost the bond and could not find it anywhere that how ever he was going to give me a written deed recording its loss. So he actually did and I have deposited that written deed in a certain box while living in that house. If the debtor pleads an excuse of this sort he must be allowed some delay to search for the document in question. If it is no longer in existence the statements of those who saw it shall decide the matter. A.

143 The handwriting another specimen of the handwriting of the party. The tenour of the document the names of the subscribing witnesses. Peculiar marks flourishes in the handwriting of the scribe. Circumstantial evidence, these two facts go together or 'they do not go together. 'The probabilities of the case 'how has he got hold of this document? or is he nervous or is his manner of speaking composed and quiet? By such expedients as these shall doubts regarding the genuineness of a document be removed. A Vishnu VII 12, Yâgñavalkya II, 92

144 If a document has passed by purchase or acceptance from the original owner who signed it into the possession of a stranger who claims the loan recorded in it from the debtor the judge must examine the document. Kalyanabhatta has composed three verses in explanation of the technical terms âgama, sambandha and hetu. Sambandha 'connex on according to him may be founded on descent, caste e, friendsh p and social intercourse

meant for a different purpose it has to be examined in case its genuineness should be suspected by inquiring into the connexion (previously existing between the two parties) and into the (probability of) title, and by resorting to reasonable inference

145 An (obligation which has been stated in) writing can only be annulled by (another) writing and an attested bond by witnesses. A writing is superior to witnesses; witnesses are not superior to a writing.

* 146 If a document is split or torn, or stolen, or effaced or lost, or badly written, another document has to be executed. This is the rule regarding documents.

11 Witnesses

* 147 In doubtful cases, when two parties are quarrelling with one another the truth has to be

Âgama a title, may be founded on inheritance purchase mortgage seizure friendship and acquisition. Hetu, 'reasonable inference' may be founded on reasoning and an efficient cause. A. For other explanations of the terms âgama and hetu in an analogous passage of Yâgñavalkya (II 92) see the *Mitrâksharâ*. The *Mayûkha* agrees with *Kalyâṇabhaṭṭa*.

145 If the debtor states that he has paid the debt, he must be able to produce an acquittance in the creditor's handwriting. In the same way if the creditor pleads that the bond has been stolen or lost, or burnt &c, he must produce a certificate from the debtor stating its loss. Where however the bond was attested by subscribing witnesses the debt has to be discharged in the presence of the same witnesses. A.

146 Where a document has met with any one out of the divers accidents mentioned in this paragraph the party by whom it was executed may be compelled to give another document instead of it. Yâgñavalkya II 91. Here ends the chapter on documents the eighth section of the law of debt. A.

147 When the plaintiff and defendant in a lawsuit quarrel

gathered from (the deposition of) witnesses whose knowledge is based on what has been seen heard or understood by them

148 He should be considered as a witness who has witnessed a deed with his own ears or eyes with his ears if he has heard another man speaking, with his eyes if he has seen something himself

*149 Eleven descriptions of witnesses are distinguished in law by the learned Five of them are termed appointed and the other six not appointed

*150 A subscribing witness one who has been reminded a casual witness a secret witness and an indirect witness these are the five sorts of appointed witnesses

about a doubtful affair of any sort the truth has to be ascertained by examining the statements of the witnesses, who have seen or heard or been present at, the transaction A

148 *Manu VIII 74 Vishnu VIII, 13*

149 Definitions of the eleven witnesses are given in the following paragraphs A

150 A subscribing witness i e one by whom a document is attested A secret witness one who concealed in a house or room listens to the discourse of the parties A Kâtyâyana defines the technical terms in this paragraph as follows 'One adduced by the claimant himself whose name is inserted in the deed, is a subscribing witness A reminded witness is not entered in a deed He is called a reminded witness who in order to insure the publicity of a transaction is reminded of it again and again by the claimant One purposely brought near and one who happened to be on the spot accidentally are two witnesses not entered in a deed by whom a claim may be corroborated One who standing concealed is caused for the purpose of establishing the claim to hear distinctly the statements of the defendant is termed a secret witness One who subsequently corroborates the statements of other witnesses whether from his own knowledge or from hearsay is called an indirect witness.

*151 The witnesses not appointed by (the party) himself have been declared sixfold viz the village a judge a king

*152 One acquainted with the affairs of the two parties, and one deputed by the claimant In family quarrels, members of that family shall be witnesses

153 They shall be of honourable family, straight forward and unexceptionable as to their descent their actions, and their fortune The witnesses shall not be less than three in number unimpeachable honest, and pure minded

154 They shall be Brahmins Vaisyas or Kshatriyas or irreproachable Sûdras Each of these shall be (witness) for persons of his own order or all of them may be (witnesses) for all (orders)

*155 Among companies (of artisans or guilds of

151 152 The village or the co villagers shall be witnesses in a transaction which has taken place within the village The testimony of the judge shall be heard in regard to a cause tried in a court of justice The king shall be witness concerning a transaction which has taken place in his presence These and one acquainted with the circumstances of both parties the agent of the claimant, and members of a family in a lawsuit concerning that family are the six kinds of witnesses not appointed A

153 Of honourable family belonging to a noble race Straightforward habitually veracious Less than three viz one or two persons may be witnesses if both parties consent to it In a dispute regarding landed property more than three witnesses are required Honest free from avarice Pure minded imbued with the precepts of religion A Manu VIII 62 63 Vishnu VIII 8 Âpastamba II 11 29 7 Gautama XIII 2, Yâgñavalkya II 68 69 Vasishtha XVI 28

154 Members of these four castes shall be witnesses for members of their own caste only Or let members of any caste be witnesses for members of any other caste A Manu VIII 62 Gautama XIII 3 Yagnavalkya II 69 Vasishtha XVI 29 Baudhâyana I 19 13

155 Companies or guilds are of eighteen kinds Labourers

merchants, other) artizans or merchants shall be witnesses and members of an association among other members of the same association persons living outside among those living outside, and women among women

*156 And if in a company (of artizans or guild of merchants) or in any other association any one falls out (with his associates) they must not bear witness against him for they all are his enemies

12 Incompetent Witnesses

*157 The incompetent witnesses, too have in this law book been declared by the learned to be of five sorts under a text of law and on account of depravity, of contradiction of uncalled for deposition, and of intervening decease

*158 Learned Brahmans devotees, aged persons and ascetics are those incapacitated under a text of law, there is no (special) reason given for it

*159 Thieves robbers, dangerous characters,

for hire shall be witnesses for other members of the same association Outcasts shall be witnesses for other low caste persons Women shall be witnesses where two women quarrel with one another In all these cases the qualities of the witnesses need not be tested A Manu VIII 68 Vasishtha XVI 30

156 If in a company of traders any one member should contract an enmity towards the other members of it, they are unworthy to bear testimony against or about him, on account of their enmity towards him Here ends the chapter on witnesses the tenth section of the law of debt. A

158 The reason why the persons referred to in this paragraph are excluded seems to lie in their entire renunciation of earthly interests which renders them unfit to appear in a court of justice See Manu VIII 65 where 'one dead to the world' is mentioned among the incompetent witnesses, and other parallel passages

gamblers assassins, are incompetent on account of their depravity there is no truth to be found in them

160 If the statements of witnesses, who have all been summoned by the king for the decision of the same cause do not agree, they are rendered incompetent by contradiction

*161 He who without having been appointed to be a witness comes of his own accord to make a deposition is termed a spy in the law books he is unworthy to bear testimony

*162 Where can (any person) bear testimony if the claimant is no longer in existence whose claim should have been heard? Such a person is an incompetent witness by reason of intervening decease

*163 If two persons quarrel with one another,

162 Supposing a man were to claim a certain sum from another and to name a witness whom he states to have witnessed the transaction If the said distant creditor should die it would be impossible to ascertain whether the statement of the witness is true or false Therefore such a witness must not be admitted by reason of intervening decease A

163 A claimant declares This bull which you have got is mine He was stolen by thieves who took seven cows along with him If they are found among your property they may be known by a red mark on the forehead or by their white feet or by other signs I am able to adduce four witnesses who will declare them to be mine The opponent replies Pragapati (the Creator) has created many two legged and four legged beings closely resembling one another If a superficial likeness is to be considered as evidence, I might take another man's wife into my house, because she has eyebrows ears a nose eyes a tongue hand, and feet like my wife This bull is born and bred in my own house I am able to adduce four witnesses from the village in which he is being kept, their statements will establish the fact that he belongs to me In a dispute of this sort the witnesses of him who was the first to bring the suit into court will decide the suit. A Yagnavalkya II 17 Vishnu VIII 10

and if both have witnesses, the witnesses of that party shall be heard which was the first to go to law

*164 If the claimant should be cast at the trial his cause proving as the weaker one of the two it is fit that the witnesses of the defendant should be heard

*165 No one should converse in secret with a witness summoned by his adversary neither should he try to estrange him from the cause of his opponent by other means A party resorting to such practices as these is cast

166 If a witness dies or goes abroad after having been appointed those who have heard his deposition may give evidence for indirect proof (through a second hand statement) makes evidence (as well as direct proof)

*167 Even after a great lapse of time (the deposition of) a subscribing witness retains its validity

164 Where the plaint is rejected and the defence acknowledged as correct the witnesses of the defendant have to be examined A Yâgñavalkya II 17 Vishnu VIII, 11

165 That man who holds secret conversations with a witness produced by his opponent or who tries to intimidate him by threats abuse and the like or to bribe him loses his suit A

166 If a witness dies or goes abroad, indirect witnesses, i.e. those who have heard him speak of the matter, on his deathbed or when he was about to start either in answer to questions of the plaintiff or of his own accord, shall be examined A Vishnu VIII, 1-

167 What follows here is intended to show how long the statements of each of the five appointed witnesses mentioned in par 150 retain their validity A subscribing witness may give valid evidence after the lapse of a very long period even. Such a witness should subscribe his name with his own hand at the time when the document is being executed, as e.g. I, Devadatta have witnessed this transaction If he is unable to write he should cause another person to write in his own name The document will make evidence, whenever the occasion arises A

if a man can write he should write (his name) himself if he cannot (write himself) he should cause it to be written by another man

* 168 (The deposition of) a witness who has been reminded (of the transaction) remains valid in this world up to the eighth year that of a casual witness remains valid up to the fifth year

* 169 (The deposition of) a secret witness remains valid up to the third year (the deposition of) an indirect witness is declared to remain valid for one year only

* 170 Or no definite period is fixed for judging a witness for those acquainted with law have declared that testimony depends upon memory

171 A witness whose understanding memory and hearing have never been deranged, may give evidence even after a very considerable lapse of time

13 Six Cases where Witnesses are unnecessary

* 172 However six different kinds of proceedings have been indicated in which witnesses are not required (Other) indications of the crime committed are substituted for the evidence of witnesses in these cases by the learned

* 173 It should be known that one carrying a fire brand in his hand is an incendiary, that one taken with a weapon in his hand is a murderer and that where a man and the wife of another man seize one another by the hair the man must be an adulterer

* 174 One who goes about with a hatchet in his

170 171 Under this rule the validity of any testimony is declared independent of length of time and to depend on the competence of the witness alone A.

hand and makes his approach may be recognised as a destroyer of bridges (and embankments) one carrying an axe is declared a destroyer of trees

*175 One whose looks are suspicious is likely to have committed an assault In all these cases witnesses may be dispensed with only in the (last mentioned) case of assault careful investigation is required

176 Some one might make marks upon his person through hatred to injure an enemy In such cases it is necessary to resort to inductive reasoning (ascertaining) the fact of the matter and strata gems in order to get a (reliable) test

14 False Witnesses

177 Those must not be examined as witnesses who are interested in the suit, nor friends nor associates, nor enemies, nor notorious offenders, nor persons tainted (with a heavy sin)

*178 Nor a slave nor an impostor, nor one not admitted to Srâddhas nor a superannuated man, nor a woman nor a child nor an oil-maker nor one

175 Suspicious looks as e g a sword smeared with blood Viramitrodaya In an analogous text of Sankha as quoted in the Viramitrodaya, &c, the possession of stolen goods is mentioned as a further manifest proof of crime

177-187 190 Manu VIII 64-67 71 Yâgnavalkya II 70 71 Vishnu VIII 1-5 Gautama XIII, 5 Asahâya observes that the rules regarding incompetent witnesses do not relate to cases of assault only but to judicial proceedings of every sort

177 Associates i.e partners in business 'Notorious offenders, persons formerly convicted of perjury or other crimes A For different interpretations of some of the terms occurring in this section see the notes to Professor Bühler's Manu, and to Burnell Hopkins's Manu VIII 64 foll.

178 A slave one born in the house. An impostor a

intoxicated nor a madman nor a careless man nor one distressed nor a gamester, nor one who sacrifices for a whole village

*179 Nor one engaged in a long journey nor a merchant who travels into transmarine countries nor a religious ascetic nor one sick nor one deformed nor one man alone, nor a learned Brahman nor one who neglects religious customs nor a eunuch nor an actor

*180 Nor an atheist, nor a Vratya nor one who has forsaken his wife or his fire nor one who makes illicit offerings, nor an associate who eats from the same dish (as oneself) nor an adversary nor a spy nor a relation nor one connected by the same womb

181 Nor one who has formerly proved an evil-doer, nor a public dancer, nor one who lives by

fallacious person. One not admitted to Śrāddhas one who is not allowed to partake of obsequial feasts A superannuated man, weak or decrepit persons One distressed, by a calamity A.

179 One who neglects religious customs one who fails to perform his religious duties 'A eunuch one incapable of begetting offspring A

180 An atheist a heretic A Vrātya one for whom the ceremony of initiation has not been performed His wife his legitimate spouse. 'His fire the sacred Vaitāna fire One who makes illicit offerings one who performs sacrifices for persons of bad fame An associate who eats from the same dish, one with whom one keeps up commensality A spy employed in the service of the king One connected by the same womb, a uterine brother

181 'One who has formerly proved an evil doer one afflicted with an ugly disease the consequence of wicked acts committed in a previous existence or one guilty of robbery or other crimes One who lives by poison one who buys or sells poison 'A snake-catcher one who catches venomous reptiles. A poisoner one who actuated by hatred, gives poison to other people An incendiary one who sets fire to houses &c Kīnāsa (a ploughman) a Śūdra, or a 1 A.

poison nor a snake catcher nor a poisoner nor an incendiary nor a ploughman, nor the son of a Sûdra woman nor one who has committed a minor offence

*182 Nor one oppressed by fatigue, nor a ferocious man nor one who has relinquished worldly appetites, nor one penniless, nor a member of the lowest castes nor one leading a bad life nor a student before his course of study is completed nor an oilman nor a seller of roots

*183 Nor one possessed by a demon nor an enemy of the king nor a weather prophet nor an astrologer, nor a malicious person, nor one self sold nor one who has a limb too little, nor a Bhagavṛtti

*184 Nor one who has bad nails or black teeth nor one who betrays his friends nor a rogue nor a seller of spirituous liquor nor a juggler nor an

182 A ferocious man one who perpetrates illicit acts of violence 'One who has relinquished worldly appetites, an ascetic One penniless' one who has lost his whole wealth through gambling or other extravagance A member of the lowest castes, a Kândāla. One leading a bad life, an infidel A The term mūlika denotes a seller of roots, according to A The Vīramitrodaya interprets it by one who practises incantations with roots

183 A explains varshanakṣhatrasūṭaka as a single term denoting an astrologer The Vīramitrodaya more appropriately divides it into two terms 'one who prophesies rain i.e. a weather prophet and an astronomer, i.e. an astrologer The term agha samsin, a malicious person, is in the Vīramitrodaya interpreted by one who makes public the failings of other people 'One self sold one who has entered the state of slavery for money One who has a limb too little, i.e. an arm or a foot 'A Bhagavṛtti one who lives by the prostitution of his wife or one who suffers his mouth to be used like a female part (bhaga) A

184 A cruel man a hard hearted man or Ugra is used as a proper noun denoting the offspring of a Kṣatriya with a Sûdra wife. A.

avaricious or cruel man, nor an enemy of a company (of traders) or of an association (of clansmen)

*185 Nor one who takes animal life nor a leather manufacturer nor a cripple nor an outcast nor a forger nor a quack nor an apostate, nor a robber nor one of the king's attendants

*186 Nor a Brahman who sells human beings cattle meat bones, honey milk water or butter nor a member of a twice-born caste guilty of usury

*187 Nor one who neglects his duties nor a Kulika nor a bard nor one who serves low people, nor one who quarrels with his father nor one who causes dissension These are the incompetent witnesses

*188 The slaves impostors and other incompetent witnesses who have been enumerated above shall be witnesses nevertheless in suits of a specially grave character

*189 Whenever a heinous crime or a robbery or adultery, or one of the two kinds of insult has been committed he must not inquire (too strictly) into the (character of the) witnesses

*190 A child also cannot be (made a witness) nor a woman nor one man alone nor a cheat nor a relative nor an enemy These persons might give false evidence

185 ' One who takes animal life, a butcher A forger one who falsifies documents or coined money A quack one who practises incantations and the like with mysterious formulas medicines &c An apostate, one who has left the order of religious mendicants An attendant of the king a menial A

187 A Kulika, a judge or the head of a caste or guild One who causes dissension, one who causes friends or others to fall out with one another Viramitrodaya

189 Manu VIII 72 Yâgñavalkya II 72 Gautama XIII 9 Viśhṇu VIII 6

*191 A child would speak falsely from ignorance a woman from want of veracity an impostor from habitual depravity a relative from affection an enemy from desire of revenge

*192 By consent of both parties, one man alone even may become a witness in a suit He must be examined in public as a witness, though (he has been mentioned as) an incompetent witness

*193 One who weighed down by the consciousness of his guilt looks as if he was ill is constantly shifting his position and runs after everybody

*194 Who walks irresolutely and without reason and draws repeated sighs, who scratches the ground with his feet and who shakes his arm and clothes

*195 Whose countenance changes colour, whose forehead sweats, whose lips become dry, and who looks above and about him

*196 Who makes long speeches which are not to the purpose as if he were in a hurry, and without being asked such a person may be recognised as a false witness, and the king should punish that sinful man

*197 He who conceals his knowledge (at the time

192 One agreeable to both parties shall be examined in an assembly of honourable men A *Manu* VIII, 77, *Yâgñavalkya* II 72 *Vishnu* VIII 9

193-196 These rules relate to the trial of a cause by the judge The time for examining the witnesses having arrived he should examine their mien and gestures Incompetent witnesses are not only those previously mentioned, but those here described are equally incompetent A *Manu* VIII, 25 26 *Yâgñavalkya* II 13-15 *Vishnu* VIII 18

197 One who has made a certain statement in the hearing of others, and makes a different statement at the time of the trial shall receive specially heavy punishment for he is a greater criminal than a false witness A *Yâgñavalkya* II 82

of trial) although he has previously related (what he knows) to others deserves specially heavy punishment for he is more criminal than a false witness even

15 Exhorting the Witnesses

198 (The judge) after having summoned all the witnesses, and bound them down firmly by an oath shall examine them separately (They should be men) of tried integrity and conversant with the circumstances of the case

199 Let him cause a priest to swear by Truth a Kshatriya by his riding animal and weapons a Vaisya by his cows, grain or gold a Sûdra by all sorts of crimes

*200 By ancient sacred texts extolling the excellence of Truth and denouncing the sinfulness of Falsehood let him inspire them with deep awe.

201 He who gives false testimony as a witness will enter his enemys house naked with his head shorn, tormented with hunger and thirst and deprived of sight to beg food with a potsherd

202 Naked with his head shorn with a potsherd (for a begging bowl) standing hungry before the door

198-228 Manu VIII 79-101 Yâgñavalkya II 73-75 Vishnu VIII 19-37 Gautama XIII 12-23 Âpastamba II 11 29 7-10 Baudhâya I 19 10-12 Vasishtha XVI 32-34 Bôhtlingk's Indische Spruche

199 Identical with Manu VIII 113 See, too Manu VIII 88 The commentators of the Code of Manu give various explanations of the latter verse It may mean that a false witness is threatened with the guilt of all offences committed against riding animals cows grain, &c , or with the guilt of stealing riding animals &c or with their loss or that the judge shall exhort witnesses to touch a cow &c

201 202 Manu VIII 93 Vasishtha XVI 33

of his adversary, shall he constantly meet his enemies who give false testimony

203 A perjured witness shall spend his nights in the same manner as a wife who has been superseded (by another), or as a man who has been worsted in playing at dice or as one whose body is weighed down by a heavy burden

204 A witness who wavers in giving evidence is sure to be fettered with a thousand bonds from the chain of Varuna

205 After the lapse of a hundred years the cord is taken off him When he is free from the cord the man becomes a woman

206 Thus is a man liberated from this fixed bondage *Now I will state, in order how many kinsmen a false witness kills,

*207 If his evidence concerns, respectively (small) cattle, cows horses human beings, gold, and land Listen to me, my friend

203 This sentiment shows that the condition of a superseded wife under Hindu law must have been far from enviable This is equally shown by the custom of presenting a certain sum to her on her supersession by another wife See Vishnu XVII 18 Yagñiavalkya II 143

204 The snaky bonds of Varuna seem to be an equivalent for dropsy a disease attributed to the influence of the ancient divinity Varuna. See Professor Bühler's note on Manu VIII 82

207 Kills, i.e. sends to hell This interpretation is given by the majority of Manu's commentators According to others it means causes to fall from heaven and to be reborn in the wombs of animals or 'incurs a guilt as great as if he had killed See Professor Bühler's note on Manu VIII 97 The idea that a man by telling a falsehood ruins his kinsmen as well as himself belongs to the remotest antiquity, and recurs in the Zendavesta See Vendidad IV 24 seq., Jolly translation of Book VIII of the Code of Manu note

207-209 Nearly identical with Manu VIII 97-99 &c

*208 He kills five by false testimony concerning (small) cattle he kills ten by false testimony concerning kine he kills a hundred by false testimony concerning horses (and he kills) a thousand by false evidence concerning a human being

*209 He kills the born and the unborn by giving false evidence (in a cause) concerning gold he kills everything by giving false evidence concerning land, beware, then of giving false evidence with regard to land

210 Truth is said to be the one unequalled means of purification of the soul Truth is the ladder by which man ascends to heaven as a ferry (plies) from one bank of a river to the other

211 If truth and a thousand horse sacrifices are balanced against one another (it will be found that) truth weighs more heavily than a thousand horse-sacrifices

212 A tank is better than a hundred wells an offering better than a hundred tanks a son better than a hundred offerings and truth better than a hundred sons

213 It is truth which makes the earth bear all beings truth which makes the sun rise It is through truth that winds blow and that the waters flow

214 Truth is the greatest gift truth is the most efficacious kind of austerity truth is the highest duty in the world thus it has been revealed to us

215 The gods are truth simply the human race is falsehood He whose mind is persistent in truth obtains a divine state in this world even

216 Speak truth and discard falsehood It is through truth that thou shalt attain heaven By

uttering a falsehood thou wilt precipitate thyself into a most dreadful hellish abode

*217 And in the hells the merciless attendants of Yama endowed with great strength will cut off thy tongue and strike thee with swords constantly

*218 And attack and pierce thee with spears while thou art wailing helpless When thou art standing they will fell thee to the ground and fling thee into the flames

*219 After having sustained thus for a long while the acute tortures of hell thou shalt enter in this world the horrid bodies of vultures, crows and other (despicable creatures)

*220 Having discovered these evils with which falsehood is attended and knowing, on the other hand the advantages resulting from veracity thou must speak truth and (thereby) save thyself Do not ruin thyself wantonly

221 Neither relatives nor friends, nor treasures, be they ever so great, are able to protect those who are about to be plunged into the tremendous darkness (of hell)

222 Thy ancestors are in suspense when thou hast been appointed to give evidence (reflecting in their minds) 'Will he conduct us (into heaven) or will he precipitate us (into hell)?'

223 Truth is the self of man Everything depends on truth Therefore thou must be intent on acquiring bliss by thy own effort by speaking truth

224 Whatever lies between that night in which thou wast born, and that night in which thou art to die (thy whole life in fact) has been spent in vain by thee, if thou givest false evidence

225 Those paces of abode which are destined

for the murderer of a Brahman and those which await the murderer of a woman or child and the regions awaiting an ungrateful man, are reserved for a false witness

226 There is no higher virtue than veracity nor heavier crime than falsehood A man must speak truth therefore particularly when he has been appointed to give evidence

* 227 There are two ancient verses (which run as follows) If a man is base enough to speak falsely in regard to the affairs of a stranger, what may not such a wretch be expected to do fearless of hell where his own welfare is concerned ?

* 228 All affairs are connected with speech have speech for their root, and depend on speech He who steals a good speech (by violating truth) is capable of committing any theft (or other crime)

16 Valid Evidence

229 Where there is conflicting evidence the plurality of witnesses decides the matter If the number of witnesses is equal (on both sides) the testimony of those must be accepted as correct

228 Theft is a very wide term under the Hindu law The Code of Manu includes in the denomination of theft forgery of documents and of coins unlawful sales and dishonesty generally For *hitām* one might read *hi tām* For he who steals speech. Manu IV 256

229 Manu VIII 73 Yagñavalkya II 78 Vishnu VIII 39

229 230 Where witnesses endowed with a good memory are found on both sides in equal numbers, evidence based on recollection is incapable of influencing the decision of the suit. The witnesses must not be examined, and the above rule comes into force that the witnesses become incompetent because they do not agree with one another A. See par 161

whose veracity is not liable to suspicion If the number of such witnesses is equal (on both sides) (the testimony of these must be accepted), who are possessed of a superior memory

17 Invalid Evidence

230 Where however an equal number of witnesses possessed of a good memory is found on both sides, the evidence of the witnesses is entirely valueless, on account of the subtle nature of the law of evidence

231 But wherever a litigant has been abandoned by his own witnesses through the act of fate, the sages have declared that he cannot be absolved by (the performance of) an ordeal even

* 232 Where the time for giving testimony having arrived a witness does not make a consistent statement with reference to the questions under notice his testimony is as good as ungiven

* 233 If the witnesses were to disagree with one another as to place, time age, matter, quantity shape, and species, such testimony is worthless likewise

* 234 If the witnesses wrongly name too low or too high a sum this too must be known to make no evidence This is the rule of witnesses

18 What has to be done in default of both Witnesses and Documents

* 235 When, owing to the negligence of the creditor, both a written contract and witnesses are missing and the opponent denies his obligation, three different methods may be adopted

* 236 A timely reminder, argument, and thirdly an oath these are the measures which a plaintiff should adopt against his adversary

* 237 He who does not refute his (adversary's) statements though he has been reminded again and again, three or four or five times may be compelled to pay the debt in consequence

* 238 If the defendant has rejected a demand (to pay), he shall aggress him with arguments relative to place time matter, the connexions (existing between the two parties) the amount (of the debt) the contents (of the written contract) and so forth

* 239 If arguments also are of no avail let him cause the defendant to undergo one of the ordeals, by fire, water proof of virtue and so forth (which may seem) appropriate to the place to the season and to the strength (of the defendant)

236 A timely reminder timely appeals to the debtor and to the witnesses who have attested the loan Argument arguing that the sum in dispute has been previously repaid or the obligation acknowledged by the debtor Thirdly he may attack the defendant with an oath or ordeal such as e.g. by causing him to swear by his own good actions or to undergo the ordeal of sacred libation &c A The term 'a reminder' is not correctly explained by Asahāya as the rule under notice refers to those cases where witnesses are missing

237 If a debtor has again and again been addressed by his creditor saying 'Thou owest me money' and the debtor does not deny the correctness of the assertion he shall be bound to pay the debt Raghunandana's Vyavaharatattva

238 Asahāya says that the various arguments mentioned in this verse shall be resorted to successively arguments relative to time having to be proffered when arguments relative to place have failed and so on

239 The term sapatha denotes both an ordeal and an oath in this place though some of the commentators deny that sapatha may have the former

240 He whom the waters keep below the surface and whom blazing fire does not burn is considered to refute the charge In the opposite case he is deemed guilty

* 241 Proof by ordeal takes place (if an offence has been committed) in a solitary forest at night in the interior of a house and in the case of a heinous offence or denial of a deposit

* 242 (Ordeals) are equally (applicable) in the case of those women whose morality has been impeached, in cases of theft and robbery, and in all cases of denial of an obligation

* 243 Of the gods and *R̥shis* even the taking of oaths is recorded *Vasishṭha* took an oath when he was accused of having assumed the shape of an evil spirit

240 If a man who is performing the ordeal by water does not rise from water and if blazing fire which he is holding in his hand does not burn him he is freed from the charge otherwise he is deemed guilty i.e. criminal A. *Manu* VIII 115 It does not become quite clear whether the divine tests referred to in this paragraph are identical with the ordeals by water and fire as described further on See the translations of *Manu* and Professor Stenzler's and Dr. E. Schlagintweit's papers on Ordeals in Ancient India

242 Where the conduct of a woman i.e. her morals is called into doubt, where theft or robbery is alleged to have been committed, and where anything has been declared false for all heavy charges in short this rule regarding the performance of ordeals has been laid down A.

243 244 *Manu* VIII 110

243 The great sage *Vasishṭha* being suspected of being an evil spirit took an oath and was cleared of suspicion thus A. The story, to which allusion is made in this place is told by the commentators of the code of *Manu*. *Viśvamitra* accused his rival *Vasishṭha* before King *Sudās* as having eaten up his hundred sons, in the shape of a *Rakshasa* (malignant spirit). *Vasishṭha* thereupon exclaimed I will fall dead on the spot if I am a *Rākshasa*.

* 244 The seven *Rishis* resolutely took an oath together with Indra in order to clear themselves mutually of suspicion when each was suspected (by the rest) of having taken lotus fibres

245 The perpetrator of a wrong action or of a crime shall be let off with one half of the punishment due to his offence, if he admits the charge or if he makes his guilt known of his own accord

246 If on the other hand, a criminal has cunningly concealed his crime and is convicted of it, the members of the court of justice will not be satisfied with his conduct and the punishment inflicted on him shall be specially heavy

244 The story here referred to occurs in the *Purana*. The meaning is this If the great sages even have taken oaths in order to clear themselves from suspicion how much less should ordinary mortals refrain from taking an oath A According to *Medhatithi* and *Govindarâga* the two earliest commentators of *Manu* the seven *Rishis* had mutually accused one another of the theft of lotus fibres Indra took an oath when he was suspected with *Ahalyâ*

245 One who has committed any wrong or sinful act to the detriment of any one whomsoever or who has become guilty of robbery or other crimes, shall have to suffer one half only of the punishment ordained for his misconduct if he acknowledges in a court of law the truth of the charge brought against himself by the injured party The same rule obtains if he has denounced himself guilty though no plaint has been lodged against him A

246 If the perpetrator of a wrong act or of robbery &c denies his guilt, on being examined in a court of justice and is convicted afterwards by means of an ordeal or of another mode of proof the assessors of the court will be incensed against and a heavy punishment inflicted on him as e.g. he will have to pay twice as much as in ordinary cases Here ends that section of the law of debt which consists of Rules for those cases where both documents and witnesses are wanting A

19 Proof by Ordeal

* 247 If no witness is forthcoming for either of the two litigant parties he must test them through ordeals and oaths of every sort

* 248 (Let him cause a Brahman to swear by) truth (a Kshatriya) by his (horse or other) vehicle and by his weapons (a Vaisya) by his cows, seeds or gold and so on (or all) by venerable deities or deified ancestors by their pious gifts or meritorious deeds

249 Where a heavy crime has been committed the ruler shall administer one of the ordeals In light cases on the other hand a virtuous king shall swear a man with (various) oaths

* 250 Thus have these oaths been proclaimed by Manu for trifling cases In a suit concerning a heavy crime divine test should be resorted to

251 Holy Manu has ordained that five kinds of ordeals should be administered to those involved in a doubtful case (which has become the object of a lawsuit) especially if the matter under dispute is of a recondite nature

* 252 The balance, fire water poison, and fifthly consecrated water are the ordeals ordained for the purgation of high-minded persons

248 In this rule are indicated the various oaths to be administered according to the caste and individual character of the offender A Manu VIII 114

249 250 These two verses are intended to indicate the difference in point of applicability between an ordeal and an oath A

251 Holy Manu has said that those against whom a charge of an aggravated nature has been brought shall have to undergo one out of the five ordeals, in order to clear themselves from suspicion, especially when a secret transgression is concerned A.

252 In this paragraph the author proceeds to enumerate the five ordeals singly A. Yāgñavalkya II 95 Vishnu IX, 11

* 253 (Those ordeals) have been ordained here by Nârada for the purpose of proving the innocence of criminals who are defendants in a lawsuit, (and) in order that right may be discerned from wrong

* 254 During the rains let the (ordeal by) fire be administered In the autumn season the balance is declared to be (the proper kind of ordeal) The (ordeal by) water should be applied in summer and the (ordeal by) poison in the cold weather

* 255 The distressed shall not be caused to undergo the (ordeal by) water nor shall poison be given to the bilious nor shall the ordeal by fire be administered to persons afflicted with white leprosy or with blindness, or with bad nails

* 256 An ordeal should never be administered to persons engaged in performing a vow to those afflicted with a heavy calamity to the diseased, to ascetics or to women, if the dictates of justice are listened to

257 Where no one declares himself ready to

253 The five ordeals have been proclaimed by the great sage Nârada for the justification of those impeached on account of their suspicious conduct by showing where the wrong lies and where not A

254 The five ordeals should be administered, each of them at those very seasons and not at any other season A Vishnu IX 25 28 30

255 256 Vishnu IX 23 25 27 29

255 In the case of the persons here mentioned the ordeals referred to should be avoided on grounds of disease and of incapacity to undergo them A

256 Persons engaged in performing a vow those who have performed the ceremony initiatory to a Soma sacrifice A

257 An ordeal should not take place unless there should be a special reason for it such as an accusation Therefore an ordeal must not be administered unless there be a plaintiff who declares himself ready to take the punishment on himself in case of defeat

undergo punishment, an ordeal cannot take place. An ordeal shall be administered to litigants where there is reason for it but not otherwise.

258 Therefore an intelligent virtuous, righteous and wise (king or chief judge) should abstain carefully from administering any one out of the (five) ordeals, unless both parties consent to it.

* 259 The ordeal by water must not take place in the cold weather nor the ordeal by fire in the hot season nor must the (ordeal by) poison be administered to any one during the rains, nor the (ordeal by) balance in stormy weather.

20 The Ordeal by Balance

* 260 Wise legislators conversant with every law have proclaimed after mature consideration the following rules regarding the mode of performing the ordeal by balance which may be administered in every season.

* 261 The two posts should be dug in every

A Yâgñavalkya II 96 Vishnu IV 20 21 The reading na di vyam (for na vinâ?) seems wrong. Or translate but there is no ordeal for plaintiffs.

258 A king or chief judge who is endowed with the qualities here mentioned should administer an ordeal with the full approval of both parties in a cause but not otherwise. A

259 The times or seasons here referred to should be avoided in the case of the ordeal by water and of the other ordeals because they are illegal. A Vishnu IX 24, 26 28 30

260-284 Vishnu X Yâgñavalkya II 100-102

260 After mature consideration after having duly considered that the ordeals by fire water and poison are subject to many interruptions or obstacles arising from time locality &c wise men have devised this ordeal by balance which may be performed during any season. That is the meaning. A

261 The apparatus for performing the ordeal by balance which is described in this and the following paragraphs, consists of the

case to the depth of two Hastas below ground (The whole of) their length is ordained to amount to six Hastas in extent

* 262 The beam of the balance should be four Hastas in length and the height of the two posts (above ground) should be the same The intermediate space between the two posts should measure one and a half Hastas

* 263 The beam of the balance should be made straight of Khadira or of Tinduka wood quadrangular and (provided) with three Sthanas and with hooks (by which the strings supporting the scale are suspended) and with other (contrivances)

* 264 He should cause it to be made of Khadira wood or Simsapa wood or in default of such of

following elements 1 Two wooden posts supporting a transverse beam The two posts should be fastened in the ground at a distance of one and-a half Hastas (1 Hasta = about 18 inches) facing the west and east. The part above ground should be four Hastas long and the part below ground two Hastas the whole length of each post amounting to six Hastas 2 The beam of the balance by which the scales have to be suspended The beam itself which should measure four Hastas and should be made of Khadira or other strong wood should be suspended by means of an iron hook and chain in the middle of the transverse beam 3 The beam of the balance should be surrounded in the middle and at the two extremities by three Sthânas (belts?) by which two iron hooks should be fastened 4 The two scales should be suspended at the two ends of the beam by the iron hooks and by four strings each 5 Each of the two scales should move in a wooden arch (torana) which serves the purpose of marking the position of the scales See Mitâksharâ and Stenzler's paper on Ordeals (vol ix of the Journal of the German Oriental Society) to which a drawing has been added for the purpose of illustrating the statements of the Smṛiti writers regarding this kind of ordeal.

263 Read *ṛigvî* in the text

264 Wood of the Khadira tree is the most eligible sort of wood Then comes Tinduka wood and lastly Simsapa wood. A.

Sâla wood (which must be) without notches and withered portions and devoid of rents

* 265 These kinds of timber should be used for preparing the beam of the balance (which should be erected) either in the midst of a public assembly or before the gates of the royal palace or in sight of a temple, or in a cross road

266 (The balance) must be dug firmly into the earth after having been covered with perfumes garlands and unguents, and after the performance of purificatory and auspicious ceremonies with sour milk whole grain, clarified butter and perfumes

267 This ordeal should always be administered in the presence of the guardians of the world who must be invoked to be present for the protection (of virtue and justice) and in sight of everybody (who cares to look on)

268 It is ordained that all ordeals should be

265 The various places here mentioned are the favourite abodes of Dharmarâga (the king of justice) when he appears on earth A The Vîramitrodaya and other compositions quote two verses of Kâtâyâna to the effect that ordeals should be administered to felons in sight of a temple to those who have offended against the king before the gates of his palace, to low caste persons in a cross road and to other offenders in the midst of a public assembly or court of justice

266 It appears from the statements of other legislators that the ceremonies to be performed on this occasion are perfectly analogous to those which have to take place on the occasion of preparing a sacrificial stake (yûpa)

267 In sight of everybody not in a solitary spot A

268-270 This is a digression relative to certain exceptions to the rule in pars 257 258 Yâgnavalkya II, 96 99 Vishnu IX 22

268 An ordeal is ordained when the plaintiff declares him self ready to undergo punishment Where however any outrage has been committed against the royal family an ordeal should be administered even without a declaration of this sort. A

administered in the forenoon, the person (to be tested) having fasted for a day and a night, taken a bath and wearing his wet dress

269 Excepting cases of high treason, an ordeal shall not be administered unless the plaintiff comes forward and declares himself ready to undergo punishment in case of his being defeated

270 The king may inflict ordeals on his own servants even without the one party declaring himself ready to undergo punishment On the other hand in the case of other persons accused of a crime (he should administer ordeals) according to law (only)

* 271 After having well fastened the two scales by the hooks of the beam he should place the man in the one scale and a stone in the other

The essential features of the proceedings described in pars 271-284 may be summarized as follows 1 The person to be tested by this ordeal should be placed in the one scale and a baslet filled with stones and sand placed in the other scale as an equivalent 2 The baslet having been made precisely equal in weight to the man with the help of goldsmiths and other persons skilled in the practice of weighing the position of the beam should be marked on each of the two aitches 3 After that the man should be allowed to descend from the scale The judge should admonish him and he should get into the scale again after a bill recounting the charge raised against him has been fastened on his head 4 A Brahman should address the balance with prayers 5 The man having descended once more from the scale the result of the second weighing should be compared with the result of the first weighing If he has risen i.e. if he has proved lighter than the first time he shall be acquitted if the scale has gone down or if it has remained in the same place as before he must be pronounced guilty 6 If any part of the balance has broken during the proceeding he has to be acquitted

271 The term a stone seems to denote an equivalent here and in the next paragraph The sequel shows that the equivalent consists of a basket filled with stones and other objects.

* 272 He should weigh the man on the northern side and the stone on the southern side There (in the southern scale) he should (place) a basket and fill it up with bricks mud and grains of sand

273 In the first weighing the weight (of the man) should be ascertained with the aid of experienced men, and the arch marked at that height which corresponds to the even position of the two scales

* 274 Goldsmiths merchants, and skilful braziers experienced in the art of weighing should inspect the beam of the balance

* 275 After having first weighed the man and having made (on the arches) a mark for the beam, in order to show the (even) position of the scales he should cause him to descend from the balance

* 276 After having admonished him with solemn imprecations he should cause the man to get into the scale again, after having fastened a writing on

273-275 Goldsmiths merchants, braziers, and other persons familiar with the art of weighing should ascertain whether the man and the equivalent are precisely equal in weight and whether the beam of the balance is quite straight, by pouring some water (on the beam of the balance?) A According to the *Pitāmaha smṛiti* the water shall be poured on the beam of the balance If it does not trickle down from the beam the beam may be supposed to be straight The way in which the position of the scales and of the beam of the balance has to be marked on the two arches may be gathered from the *Yagñavalkya smṛiti* which ordains that a line shall be drawn (across the arches)

276 He should cause the man to get into the scale once more after having reminded him of his good actions and of the pre-eminence of truth having invoked the deities and having fastened on his head a bill recounting the charge and containing an imprecation The whole proceeding must not take place in windy or rainy weather A The *Vīramitrodaya* and other compilations quote another text of *Nārada* according to which no verdict should be given if the scales have been moved by the wind

his head There must be neither wind nor rainfall
(at the time when this ordeal is being performed)

277 When he has ascended (the scale) a Brahman holding the scale in his hand should recite the following Thou art called dhata (a balance) which appellation is synonymous with dharma (justice)

* 278 Thou knowest the bad and good actions of all beings This man, being arraigned in a cause, is weighed upon thee

279 Thou art superior to gods demons, and mortals in point of veracity

[Thou, Balance, hast been created by the gods in time out of mind as a receptacle of truth

* 280 Deign to speak truth therefore O propitious being and deliver me from this perplexity If I am an offender take me down

* 281 If thou knowest me to be innocent, take me upwards] Therefore mayst thou deliver him lawfully from the perplexity in which he is involved

282 After having addressed him (invoking) the guardians of the world and the gods with these and other such speeches he should cause the man who has been placed in the scale to descend once more and should ascertain (the state of the matter)

* 283 If he rises on being weighed (for the second time) he is undoubtedly innocent. If his

277 This quibble is based on the fact that the two words Dhata and Dharma commence with the same syllable

279-281 The words enclosed in brackets cannot be genuine They appear to be a quotation from the Yâgnavalkya smṛiti (II 101 102) which has been added as a marginal gloss by a copyist and has subsequently crept into the text Yagnavalkya puts the entire address in the mouth of the defendant himself whereas all the other Smṛiti writers put it in the mouth of a third person

weight remains the same as before, or if he goes down he cannot be acquitted

* 284 Should the scales break or the beam or the hooks split or the strings burst or the transverse beam split (the judge) shall pronounce a formal declaration of his innocence

21 The Ordeal by Fire

* 285 I will propound, next the excellent law regarding the (ordeal by) fire The interval between

284 It seems strange that the accidents mentioned in this paragraph should be viewed as proofs of innocence Vishnu Katyayana and Vyâsa rule that the proceeding shall be repeated in every such case Brîhaspati says that at these accidents shall be taken as proofs of guilt The reading *murtitaḥ* may be wrong (for *punaḥ sa?* he shall cause the proceeding to be repeated) See Vyâsa

285-303 Vishnu XI, Yagnavalkya II 103-107

The essential features of the ordeal by fire are as follows
 1 Eight concentric circles of equal breadth are marked on a piece of ground 2 An iron ball is heated repeatedly by a blacksmith 3 The hands of the defendant are examined and all existing sores or scars coloured with dots 4 His hands are wrapped up in leaves in order to protect them against the hot iron 5 A prayer addressed to Agni god of fire shall be recited and written on a leaf which is fastened on the head of the defendant 6 The iron ball is placed in his hands and he is made to walk slowly through all the circles successively taking one circle with each step On reaching the last circle he may throw the ball on the ground 7 His hands are examined once more If they are found to contain any fresh sores or wounds he is guilty if not he is innocent 8 If he lets the ball drop from fear before having reached the last circle or if the examination of his hands has yielded no definite result, the whole proceeding has to be repeated

285 Other legislators state that each circle shall be thirty two Angulas broad together with the space situated between it and the next circle In par 299 it is said that the breadth of each circle shall equal the length of the defendant's foot This rule according to the commentators refers to the circle minus the intermediate space between it and the next circle and means that a

every two circles is ordained to measure thirty two Angulas

* 286 Thus the space covered by the eight circles will measure two hundred and fifty-six Angulas

* 287 He should place seven leaves of the holy fig tree in the hands of the defendant and should fasten the leaves (on his hands) with seven threads

* 288 A professional blacksmith who has practice in working with fire and whose skill has been tested on previous occasions, should be caused to heat the iron in fire

* 289 290 An iron ball fifty Palas in weight having been repeatedly made fiery sparkling and red hot a pure Brahman who reveres truth, should address it as follows when it has been heated thrice

Listen to the law of Manu which is superintended by the guardians of the world (themselves)

* 291 Thou O fire art the means of purification and the exalted mouth of all the gods Thou dwelling in the heart of all beings knowest this affair

* 292 Truth and falsehood proceed from thy tongue Deign not to show thyself unworthy of the character thus attributed to thee in the Vedas and other books

* 293 This man (the defendant) has been thus addressed by that man (the plaintiff) and has denied

circle shall equal the defendant's foot in breadth where the foot is longer than sixteen Angulas Pitāmaha says that the outlines of the circles shall be marked with cow dung

288 'A professional blacksmith not one officiating temporarily in that capacity A

289 290 The Viramitrodaya says that the iron ball shall be put into cold water after it has been heated for the first and second times

the charge, (declaring) I will seize the fire in order to show that it is all untrue

* 294 Thus confiding in truth this man is holding thee Therefore O fire be cool for him if he speak the truth If however he should tell a lie as a sinner I implore thee to burn his hands

* 295 This prayer having been carefully written on a leaf and recited he should fasten the leaf on his head and after having done so should then give him the iron ball

* 296 Having bathed and stepped into the space covered by the (eight) circles he should seize the fiery ball take his stand in one circle, and walk slowly through the seven others

* 297 (The man) must not put it down again till he has passed through the whole of the measured ground On reaching the eighth circle he may drop the fiery ball

* 298 That man who lets the ball drop from fear or who cannot be proved to have been burnt, shall take the hot iron once more this is a fixed rule

* 299 Each circle should be made as broad as his foot He must not go further than the breadth of one circle with one step, nor must he remain behind it

300 In this way the ordeal by fire should always be performed It is adapted for every season except summer and very cold weather

* 301 All sores or scars on his hands should be marked with signs previously and one should examine the hands again afterwards (and look after) the dots with which (the sores) have been marked

* 302 If it does not appear whether (either of) the two hands is burnt, he shall take and seven times crush grains of rice in his hand with all his might

* 303 The grains having been crushed by him if the members of the court should declare him to be unburnt he shall be honourably released as being innocent If he is burnt he shall receive due punishment.

22 The Ordeal by Water

304 I will now proclaim the excellent law regarding the (ordeal by) water (which may be performed at all seasons) one after the other, excepting the winter and dewy seasons

* 305 (This ordeal may be performed) in streams

302 303 The crushing of grains of rice serves the purpose of making visible such wounds as might have been overlooked previously Here ends the section of the ordeal by fire A

305-317 Vishnu XII Yagnavalkya II 108 109

The ordeal by water may be briefly described as follows
 1 This ordeal should be either performed in a tank or in a river which has no swift current 2 Three arrows should be discharged from a bow of muddling size 3 After that a strong man should enter the water as far as his navel The defendant should seize him by the thigh and dive under water 4 A swift runner should be sent after the second arrow When he has reached the place where it has fallen another equally swift runner should be sent back with it to the place where the defendant has entered the water 5 The defendant is declared innocent if he has remained under water till the arrow has been brought back He is declared guilty if any one of his limbs have been seen, or if he were to emerge from the water in a different spot from that where he entered it 6 During the proceeding a prayer is addressed to the deity of water in which it is asserted that fire arose from water and that the water ordeal is superior therefore to the ordeal by fire

305 The winter season comprises the months Agra-hâyanâ and

which have not too swift a course in oceans and rivers in lakes, in ponds dug by the gods in tanks and in pools

* 306 The diving shall take place after three arrows have been discharged from a bow which must not be too strong Wise men (have declared) what its strength should be

307 A strong bow is declared to be 107 (Angulas) long a moderate bow 106 and an inferior bow 105 (Angulas) This is declared to be the rule regarding the bow

* 308 A strong man should be placed like a pillar in water reaching to his navel The defendant should seize him by the thigh and dive under water

Pausha The dewy or cold season (Sisira) comprises the months Magha and Phalguna It appears therefore that the ordeal by water must not be performed during the period extending from the middle of November to the middle of March i e during the cold weather This is no doubt because the low temperature of the water during the cold weather might affect the capacity of the defendant to hold out under water sufficiently long

306 Devakhâta a pond dug by the gods denotes a natural hollow or lake (Böhtlingk's Dictionary) Nandapanâita, in his Commentary of the Vishnu smṛiti (LXIV 16) gives the well known lake of Pushkara, near Agmir as an instance of a Devakhâta.

307 It seems strange that the difference in length between the bows should not amount to more than one Angula or inch The commentators take the three numerals in this paragraph to denote 105 106 and 107 respectively and I have translated in accordance with this interpretation It is however possible to translate the three numerals by 500, 600 and 700 respectively and to refer them to the number of Hastas (1 Hasta = 18 inches) traversed by each of the three arrows According to another text which is wrongly attributed to Nârada by some commentators, the arrows shall be shot at a target which has to be placed at a distance of 150 Hastas from the marksman

* 309 From the place where the arrows have been discharged a young man endowed with swift ness of limb should walk as quickly as possible to the place where the middlemost arrow has fallen down

* 310 Another man, who must be an equally swift runner should seize the middlemost arrow and return with it quickly to the place from which the (first) man has proceeded

311 If he who took the arrow does not see the defendant in water on arriving because he is completely under water the defendant must be acquitted

* 312 Otherwise he is guilty though only one limb of his have become visible (He is pronounced guilty) equally if he has moved to a different place than that where he was first immersed

* 313 Women or children must not be subjected to the ordeal by water by persons acquainted with the law nor sick, superannuated or feeble men

* 314 Cowards those tormented by pain and persons afflicted by a calamity should also be held exempt from this trial Such persons perish immediately after diving because they are declared to have hardly any breath

* 315 Should they even have appeared before the court on account of a serious crime he must not cause them to dive under water nor must he subject them to the ordeal by fire, or give them poison

* 316 Nothing is more capable than water and fire of showing the difference between right and wrong

316 317 These two paragraphs contain the prayer by which he deity of water should be addressed A Vishnu XII 8, Yagñavalkya II 108

Because fire has arisen from the waters therefore suspected persons

* 317 Are subjected to this proof by preference by persons thoroughly conversant with the law Therefore deign, O venerable Lord of Waters, to effect acquittal through truth

23 The Ordeal by Poison

* 318 Now I shall proclaim the excellent rule regarding the ordeal by poison at what time in what manner, and in what form it should be administered

* 319 The exact quantity of the poison (to be given) having been fixed by persons conversant with the essence of law it shall be weighed, and given to the defendant in the autumn season when winter sets in

320 A man acquainted with law, must not (administer this ordeal) in the afternoon nor in the

318-326 The ordeal by poison consists of the swallowing of a mild poison by the defendant. He is innocent if he digests the poison without being affected by it. Vishnu XIII Yâgñavalkya II 110, 111

319 The autumn season Sarad, comprises the two months of Āsvina and Kārttika or from middle of September to middle of November. The winter season comprises the two months of Aprahāyana and Pausa, or from middle of November to middle of January. Mitramisra, who quotes this text in the Vīramitrodaya asserts that the term the winter season must be taken in this place to include the dewy season Śiśira, as well, i.e. the time from middle of January to middle of March.

320 Though the season of Sarad has been referred to in par 319, it must be reckoned among the prohibited seasons according to par 320 A. This observation seems to be just, because the performance of this ordeal in the Sarad season is prohibited in par 324 as well. Vāsanta the spring season extends from middle of March to middle of May. Grishma, the hot season extends from middle of May to middle of July. Varshā the season of the rains extends from middle of July to middle of September.

twilight nor at noon It must be avoided likewise in the autumn summer, spring and rainy seasons

* 321 Spoiled poison, shaken poison, scented and mixed poison as well as Kalakûta and Alâbu poison should be carefully avoided

* 322 Poison from the *Sringa* plant which grows in the Himalayas of an excellent quality having (the required) colour flavour and taste and preserving its natural condition, should be given to members of the Kshatriya Vaisya, and Sûdra castes

* 323 Let him give to the defendant one eighth less than the twentieth part of a sixth part of a Pala of the poison mixed with clarified butter

* 324 Six Yavas should be given in the rainy season, five Yavas in the hot season seven or eight in the winter season, in the autumn season this ordeal must not take place

* 325 Thou O poison art the son of Brahman

321 Spoiled shaken scented and mixed poison should be avoided because it has been changed from its natural state (into something different) Kâlakûta and Alâbu poison should be avoided because it is too strong A Kalakûta is a certain deadly poison contained in a bulbous root or tuber According to a well known myth the Kâlakûta poison was produced at the churning of the ocean when it threatened to destroy the whole world and was therefore swallowed by Siva Alâbu is the bottle gourd

323 There are 960 Yavas to a Pala The fraction therefore is as follows — $960 \times \frac{1}{8} \times \frac{1}{20} \times \frac{1}{6} = 7$ Yavas In par 324 the author says that seven or eight Yavas of poison should be given in winter i.e. in that season when this ordeal is ordinarily administered Vishnu lays down generally that seven Yavas of poison should be given

324 This rule shows that the prohibition which has been levelled in par 320 against the performance of this ordeal in the rainy and summer seasons must not be interpreted too strictly

325 This is the prayer which should be addressed to the poison A.

Truth and virtue are thy support Clear this man from guilt Become (like) Ambrosia to him, through truth

* 326 Let the man be kept in a shadowy place without taking food, for the whole remainder of the day If he remains free from convulsions such as are generally caused by poison he is declared innocent by Manu

24 The Ordeal by Sacred Libation

* 327 Now I shall proclaim the excellent rule regarding the ordeal by sacred libation as it has been laid down for all seasons indiscriminately by learned men

* 328 The consecrated water shall be given early in the morning to a virtuous man who believes in God He must have fasted and bathed and wear his wet clothes

* 329 The defendant should be made to drink three mouthfuls of water in which (an image of) the deity whom he holds sacred has been bathed and worshipped

* 330 If he should meet himself with any calamity

326 Here ends the chapter of the ordeal by poison A

327-333 Vishṇu XIV Yagñavalkya II 112 113

327 The ordeal by sacred libation is performed by swallowing three mouthfuls of consecrated water in which an idol has been bathed The defendant is declared innocent if no misfortune befalls him within a certain period after this trial

328 Immoral persons and infidels must not be subjected to this ordeal because they are already deprived of the assistance of the gods in every case A Read pūrvahye in the text

330 If any misfortune should happen to him through the act of the king or through fate it shall be taken as proof of his guilt A. Other legislators refer in particular to illness, fire, death

within a week or a fortnight (after having undergone this ordeal) it shall be regarded as proof of his guilt

* 331 If a great misfortune even should befall him after the lapse of a fortnight he must not be harassed by any one because the fixed period has elapsed

* 332 The drinking of consecrated water should be avoided in the case of great criminals, irreligious or ungrateful men eunuchs low rascals, unbelievers, Vratyas and slaves

333 A righteous king who administers the five ordeals to persons charged with a crime in the way which has been stated acquires prosperity both in a future state and in this life

* 334 The ordeal by water is destined for the hot season The ordeal by poison (should be administered) in very cold weather A Brahman should be tested by the balance, fire is reserved for the Kshatriya

* 335 The ordeal by water should be administered to the Vaisya Poison should be given to the Sûdra He must not give poison to the Brahman, nor should a Kshatriya take the (hot) iron

of a relation or punishment inflicted by the king Nor is every sort of disease to be considered as proof of guilt It is obvious that the inclusion of a punishment inflicted by the king among the proofs of guilt ends to place the defendant at the mercy of the sovereign power

332 All the various categories of persons that are mentioned here as unfit for the performance of this ordeal are so because they are already deprived of the assistance of the gods in every case A Vratyas those who have not been invested with the thread

333 The term persons charged with a crime may denote both real offenders whose offence has remained secret, and wrongly accused persons A

336 The (five) ordeals ending with the sacred libation and beginning with the balance should be administered in the case of heavy charges. One hundred and fifty (Panas) should be given (to the defendant) if he has been acquitted. One who has not been acquitted is liable to punishment.

25 The Rice Ordeal

* 337 Now I will proclaim the rule regarding the grains of rice which have to be chewed (by the defendant). This rice ordeal should be administered in cases of larceny but on no other occasion whatsoever. That is the law.

* 338 Let the judge who must have cleansed himself previously, use white grains of rice but not (the grains) of any other fruit, and let him place them in an earthen vessel in the sight of (an image of the deity of) the sun.

339 After having mixed them with water in which (an image of the sun god) has been bathed, he shall leave them in that place for a night. At daybreak after having prepared them three times, a worshipper of the gods shall give them himself.

340 (To the defendant) who must be facing the east and must have bathed and fasted after having proclaimed the charge himself, in order that right may be discerned from wrong.

337-342 The rice ordeal consists of chewing a number of grains of rice in the husk. If the tooth flesh is hurt and if blood issues forth or if the man is seen to be trembling during the proceeding, it is viewed as a proof of guilt. Otherwise he is acquitted.

339 Should the reading be *triṣṭi kṛtvā*, (he shall give them) thrice?

* 341 When the defendant has chewed the grains he shall cause him to spit them on a leaf If a leaf of the holy fig tree be not available he shall take a leaf of the birch tree (for that purpose)

* 342 Should blood issue forth or the tooth flesh be hurt or the limbs shake, he must be pronounced guilty

26 The Ordeal of the Hot Piece of Gold

343 Now I shall give a description of the ordeal of the hot piece of gold which has been ordained by Brahman himself for the purpose of distinguishing virtue from vice

* 344 (The judge) after having cleansed himself, shall quickly pour clarified butter into a golden silver iron, or earthen vessel and shall place the vessel on the fire

* 345 He shall throw into it a shining coin made of gold silver copper or iron after having washed it in water more than once

* 346 Should (the coin) ever drop into the boiling (mixture) it would be a very dangerous thing to touch him (the fire ?) Therefore he must address the clarified butter with the following prayer

* 347 Thou art the best instrument of purification O clarified butter and (comparable to) Am

343-348 The ordeal of the hot piece of gold (Taptamâsha) derives its name from the gold coin (mâsha) or signet ring (mudrakâ) which those who are tried by this ordeal are required to pick out of a vessel filled with a boiling liquid with the thumb and forefinger They are declared innocent if the hand remains un hurt.

346 The reading of the first half of this paragraph is quite uncertain and the above rendering conjectural

brother at a sacrifice Burn this man at once if he is criminal and be as cold as ice to him if he is innocent

* 348 If on touching and examining the forefinger (of the defendant) it is found to be unhurt and to show no boils he is innocent Otherwise he is not (innocent)

SECOND TITLE OF LAW

DEPOSITS

* 1 Where a man entrusts any property of his own with another in confidence and without suspicion it is called by the learned a Deposit, a title of law

2 A sensible man should make a deposit with one who belongs to a respectable family and who is virtuous acquainted with his duties veracious influential, wealthy and honourable

3 In whatever manner a man may have delivered

348 Some writers refer to two further ordeals besides the seven kinds mentioned by Nārada One of them is the ordeal of the red hot ploughshare which the defendant is made to lick The other consists of drawing lots

II 1 With one in whom he places no confidence a man will not deposit a single cowry even without the guarantee of a written receipt or of witnesses On the other hand he will deposit a thousand Suvarnas even without a receipt or witnesses with one in whose honesty he places implicit reliance A

2 A prudent man may entrust a deposit to one endowed with the seven qualities here mentioned because he feels sure that he may recover his property at any time A The term mahapakṣha influential means literally one who has many friends and relations. Identical with Manu VIII, 119

3 The e.g. a sealed deposit must be returned with the seal a deposit made before witnesses must be restored in the presence of the same witnesses See Jolly translation of Book VIII of the Code of Manu. Identical with Manu VIII 180

any of his effects to another in the same manner shall that article be restored to him. Delivery and receipt ought to be equal.

4 If the depositary fails to restore the deposit to the depositor as he ought, he shall be compelled to restore it by forcible means after his guilt has been proved by ordeals or other (modes of proof).

5 If one article hidden in another is deposited in another man's house without stating (what it is) it is termed an *Aupanidnika* deposit.

* 6 Deposits are again divided into two species, attested and unattested ones. They must be restored precisely in the same condition (as they were in at the time of their delivery). Otherwise an ordeal must take place.

* 7 The wicked man who does not return a deposit on being asked to do so by the depositor, shall be punished by the king. If the deposit has

4 Where the depositary, actuated by interested motives, refuses to restore the deposit and is convicted of his guilt in a court of justice by an ordeal or by other proof, he must restore it and pay twice its value as a fine. A. *Manu* VIII, 190.

5 One article hidden in another, such as e.g. a pearl necklace tied up with a particular sort of knot in a cloth. Such a deposit must be restored in the same condition as before and tied with those very knots with which it was originally delivered. A. *Yagnavalkya* II, 65.

6 If a deposit has been handed over to the depositary in the presence of witnesses, it must be restored before witnesses. If no witnesses were present at the time of its delivery, they may be equally dispensed with at the time when it is returned to the depositor. If it is not returned to him, the depositary must perform an ordeal or make an oath &c. A.

7 The last clause concerns a deposit which has not been returned on demand. In that case a calamity arising through fate or the king affects the depositary and not the depositor. A. *Manu* VIII, 191, *Vishnu* V, 169-171.

been lost or destroyed he shall make good its value

8 If he derives profit from a deposit by using it without the consent of the depositor he shall be punished likewise and shall restore the profit together with interest to the depositor

9 If a deposit is lost together with the property of the depositary the loss shall be the depositary's. The same rule shall obtain if the loss has been caused by fate or by the king unless (the depositary) should have acted fraudulently

10 The depositor being dead if the depositary restores the deposit to his next of kin of his own accord he must not be harassed either by the king or by the relations of the depositor

11 (The rightful owner) shall try to recover it amicably without resorting to stratagems. Or he shall explore (the depositary's) mode of living and cause him to restore it by friendly expostulations

8 If the depositary without the knowledge of the depositor derives gain from the use of the deposit he shall be punished and shall make over his gain together with interest to the depositor. A Yagnavalkya II 67

10 If the depositor being dead the depositary through honesty restores the deposit to his nearest relative and heir without having been asked to do so or without the existence of the deposit being known to the heir he must not be harassed by the relatives of the depositor asserting 'He has not restored all' or by the king. A Manu VIII 186

11 Nārāyaṇa in commenting on Manu VIII 187 observes that this rule applies to one who believes a deposit to be with another but has not made it over himself. He shall try to recover the deposit amicably or he shall ascertain whether the depositary has made extraordinary expenses and may therefore be suspected to have embezzled the deposit. Other commentators explain this text in a different manner. See Professor Bühler's note on Manu VIII, 187. Nearly identical with Manu VIII 187

12 What has been stolen by thieves carried away by water or burnt by fire need not be restored (by the depositary) unless he should have appropriated something out of it

* 13 He who fails to restore a deposit and he who demands what he never deposited shall both be punished like thieves and shall be made to pay a sum equal (in amount to the value of the deposit)

* 14 The same law applies in the case of Yâkita Anvâhita and other such deposits articles made over to an artist Nyâsa and Pratinyâsa deposits

* 15 If a man takes charge of a wealthy boy the law is also the same These six cases are equal (from a legal point of view)

12 If however he is convicted by the performance of an ordeal of having derived some profit from the deposit he shall restore his gains A Nearly identical with Manu VIII 189

13 Either of the two criminals here mentioned must be punished like a thief and pay the value of the deposit as a fine A Nearly identical with Manu VIII 191

14 Yâkita is what has been borrowed for use especially clothes and ornaments which have been borrowed on the occasion of a wedding or other festival Anvâhita is a deposit which has been delivered by the depositor to a third person, on condition of its being returned afterwards to the owner Articles made over to an artist are materials to be worked by an artisan as e.g. gold delivered to a goldsmith to be made into an earring Nyâsa is a secret deposit which has been handed over to some one inhabitant of the house behind the back of the house owner Pratinyâsa is a mutual bailment both parties exchanging deposits with one another Asahaya, Vignânesvara, Mitrāmītra &c Yâgñavalkya II, 67

15 If a man takes a wealthy boy who has no guardian into his house the property of the boy is subject to the above rules regarding deposits A

THIRD TITLE OF LAW

PARTNERSHIP

* 1 Where traders or others carry on business jointly, it is called Partnership which is a title of law

* 2 Where several partners are jointly carrying on business for the purpose of gain the contribution of funds towards the common stock of the association forms the basis (of their undertakings) Therefore let each contribute his proper share

3 The loss expenses and profit of each partner are either equal to those of the other partners or exceed them or remain below them according as his share is equal to theirs or greater or less

* 4 The stores the food the charges (for tolls and the like) the loss the freight and the expense of keeping valuables must be duly paid for by each of the several partners in accordance with the terms of their agreements

* 5 (Each partner) is responsible for what has been

III 2 Thus e g a principal amounting to 1000 Drammas is invested in their common business by four partners One contributes one half of the principal i e 500 Drammas Another contributes one fifth i e 200 Drammas A third contributes 200 Drammas likewise A fourth contributes 100 Drammas The percentage of the gain and of the charges will be in accordance with the share contributed by each partner A

3 Manu VIII 211, Yagñavalkya II 259

4 The expense incurred by the purchase of merchandise, for food &c has to be defrayed by all the partners in due shares according to the terms originally agreed on and the several shares contributed by them A

5 He who causes the loss of funds contributed by all the partners must make it good and so must he who has infringed

lost by his want of care or in consequence of his acting against the instructions of or without authorization from, all the other coparceners

* 6 Where the property of the partnership is in danger through fate through a gang of robbers or through the king the tenth part of the goods shall belong to him who has preserved them through his own exertion

* 7 Should one partner meet with an accident his heir shall replace him or on failure of an heir another man or all (the partners) if they are capable (of becoming his substitute)

³ 8 In the same way where an officiating priest has met with an accident another (priest) shall officiate for him and receive from him his part of the fee to the stipulated amount

9 Where an officiating priest forsakes a sacri-

the rules of the society or who has caused a loss by acting without authorization from his partners A Yagnavalkya II 260

6 If any one member of the society exerts himself to guard their common property against a fire or against a gang of robbers or against an encroaching prince who wants to seize it he shall receive a tenth part of it as a reward for his trouble A Yâgñavalkya II 260

7 Should any one among the partners die his sons or other heirs shall take his share Failing heirs it shall belong to any other partner who is able to officiate for him Or if all are able to officiate for him they all shall take it together A Yagnavalkya II 265

8 If among several officiating priests one should meet with a calamity his share of the work shall pass to another and the stipulated fee shall also belong to his substitute A Manu VIII 206

9 If the case of an officiating priest or sacrificer who has left the other party from anger avarice or some other reprehensible motive and without delinquencies on the part of the other party be brought before the king, he shall punish him A Manu VIII 389 Yagnavalkya II, 237 V shru V 113

ficer who is no offender and free from guilt or where (a sacrificer) forsakes a faultless priest they shall both be punished

* 10 There are three sorts of officiating priests one honoured by previous generations one appointed by (the sacrificer) himself and one who performs the functions of a priest of his own accord through friendship

* 11 This law applies to hereditary and self-chosen priests But it is no sin to abandon a priest officiating of his own accord

* 12 A trader on reaching a toll house should pay the legal duty A prudent man must not try to evade it (because) it is called the (k n g s) tax

* 13 If he evades a toll house or if he buys or sells at another than the legal hour or if he does not state the value (of his goods) correctly he shall be fined eight times the amount which he tried to evade

11 In the case of those officiating priests who have been employed by the ancestors of the sacrifices i e who are hereditary in his f m l y and in the case of those who have been chosen by himself the punishment ordained for forsaking a priest should be inflicted But if the sacrificer abandons one who officiates for him from friendship and employs in his place one better qualified or more acceptable to himself, awarding to him the stipulated fee he is free from blame A

12 A duty is the k n g s due and traders must not defraud the king of it A

13 There are three ways for evading a duty one, if a merchant avoids a toll house and thus escapes paying the ordinary toll another if he buys or sells at an unseasonable time a commodity on which he has not paid the customary duty, a third if he does not state correctly the amount or value of his goods or chattels A merchant who has committed any one out of these offences shall pay eight times the amount of the duty embezzled by him as a fine A. Manus VIII 400 Yagyaalkya II, 62

14 It is declared that a wise man should always abstain from levying a toll on that property of a learned Brahman which belongs to his household but not (on that which he uses) for trading purposes

15 The alms received by Brahmans, the property of stage players and what is capable of being carried on one's back, on all that he must raise no duty

* 16 If a travelling merchant who has come into his country should die there, the king shall preserve his goods till the heir comes forward

* 17 On failure of an heir, he must make them over to his relatives or connexions. On failure of them he shall keep them well guarded for a period of ten years

* 18 When such property without an owner, and which is not claimed by an heir has been preserved for ten years the king may keep it for himself. Thus the sacred law will not be violated

14 The term *Srotriya* a learned Brahman applies to Brahmans generally in this place. All the chattels of a Brahman except what belongs to the household furniture are liable to pay duty. Likewise if he imports and exports goods in trading those goods have to pay duty. A. *Manu* VII 133. *Âpastamba* II 10 26 10. *Vasishtha* XIX 23. *Vishnu* III 26.

15 The following three descriptions of property shall be exempt from taxation: alms received by Brahmans no matter how great their value, the property of actors, singers and the like persons and what may be carried on the shoulders by any one. A. *Vasishtha* XIX 37.

18 Read *adâḥadam* in the text

FOURTH TITLE OF LAW

RESUMPTION OF GIFT

* 1 Where a man wishes to resume what he has given because it has been unduly given by him it is called Resumption of Gift a title of law

* 2 What may be given and what not valid gifts and invalid gifts thus the law of gift is declared fourfold in judicial affairs

* 3 Again what may not be given is eightfold what may be given is of one kind only of valid gifts there are seven species and sixteen sorts of invalid gifts

* 4 An Anvâhita deposit a Yâkita a pledge joint property a deposit a son a wife the whole property of one who has offspring

* 5 And what has been promised to another man these have been declared by the spiritual guides to be inalienable by one in the worst plight even

* 6 What is left (of the property) after the expense of maintaining the family has been defrayed

IV 1 Unduly means in a mode opposed to law Mitakshara, Viramitrodaya Mayâkha &c Manu VIII 214

2 Valid gifts, literally what is given Invalid gifts literally what is not given

4 For the meaning of the technical terms Anvâhita and Yâkita see II 14 The prohibition of such gifts as would leave the family destitute appears to relate principally to charitable donations and religious endowments

4-6 Yâgnavalkya II 175

6 That only may be given which is left after the cost of living has been defrayed for those whom the head of the family is bound to support Any gift, on the other hand which causes hardship to the family is reprehensible and not meritorious. A

may be given. But by giving away anything besides a householder will incur censure.

7 He who has for three years property sufficient to provide for those whom he is bound to maintain or who has even more than that, shall drink the Soma juice.

* 8 The price paid for merchandise wages (a present offered) for an amusement (a gift made) from affection or from gratitude or for sexual intercourse with a woman, and a respectful gift, are the seven kinds of valid gifts.

* 9 Invalid gifts are the following (sixteen) what

7 This rule applies to those cases where there is more wealth than what suffices to maintain the family. A. Manu XI 7, Yagnavalkya I 124. Vasishtha VIII 10. Vishnu LIX, 8.

8 Those gifts only are valid which have been made in one of the seven modes here mentioned. The sixteen other modes of gift are illegal. A. 'A present offered for an amusement, i.e. what has been given to bards, eulogists and the like persons. A gift made from affection to a daughter or other relative. Vīramitrodaya, &c. Instead of *stribhakti* sexual intercourse with a woman the MSS of Vulg. and the quotations read *strisulka* a nuptial gift presented to the relations of the wife.

9-11 1. Fear, as e.g. if an honest man promises one hundred drachmas to a ruffian who addresses him while he is passing through a forest with the words, 'If thou givest me one hundred drachmas thou shalt live. Otherwise thou shalt die.' 2. Anger or hatred. If a man, actuated by jealousy, says to a Brahman to whom his wife has offered a seat, 'All the furniture which you see in this house shall be yours.' 3. Sorrow. If a man in a heavy affliction declares, 'I will go into the forest. My house has been given to Brahmins to-day.' 4. 'Pain. A man distressed by a painful illness says to a Brahman, 'I have given thee one hundred Suvarnas.' 5. A bribe. A litigant says to an assessor of the court, 'I will give thee one hundred Pāṇas if my cause is declared victorious by thee.' 6. In jest. What has been laughingly given. 7. Under false pretences, as e.g. under the following circumstances.—A libidinous man is enamoured of a public woman, by the name of *Āṇ* (Mango Bud⁷). He is deprived of her

has been given by a man under the influence of fear, anger hatred, sorrow or pain or as a bribe or in jest, or fraudulently under false pretences,

*10 Or by a child, or by a fool, or by a person not his own master, or by one distressed, or by one intoxicated, or by one insane or in consideration of a reward, thinking This man will show me some service

*11 And so is invalid what was given from ignorance to an unworthy man thought to be worthy or for a purpose (thought to be) virtuous

*12 Both the donee who covets invalid gifts and accepts them from avarice and the donor of what ought not to be given who yet gives it away deserve punishment.

by a Thakur and is bewailing his separation from her Some one asks him whether he will make him a present of a ring, in case he should bring *Kûtamañgarī* before him He promises to give the ring and offers a surety for it Thereupon the other exhibits a Mango bud (*Kûtamañgarī*) to him instead of the woman *Kûtamañgarī* 8 What was given by a child. 9 What was given by a fool 10 What was given by a person not his own master 11 What was given by one distressed as e g if a man being carried away by a current of water exclaims 'I will give one hundred *Suvarnas* to any one who saves my life 12 What was given by one inebriated 13 What was given by one insane or possessed by a demon 14 What was given through a hope of recompense, in expectation of some service to be performed by the donee 15. What was given to an unworthy man, from ignorance as e g to a *Sûdra*, whom the donor fancied to be a Brahman because he saw him girt with the sacred thread 16 What was given for a purpose (thought to be) virtuous as e. g if a devout man has made a religious endowment, and the donee employs it for gambling or libidinous purposes A. Other jurists construe these texts somewhat differently in order to obtain the sixteen sorts of void gifts distinguished by Nârada. Manu VIII, 212.

FIFTH TITLE OF LAW

BREACH OF A CONTRACT OF SERVICE

* 1 If a man has promised to render service and fails to render it, it is termed Breach of a Contract of Service, a title of law

* 2 The sages have distinguished five sorts of attendants according to law Among these are four sorts of labourers the slaves (are the fifth category of which there are) fifteen species

* 3 A student, an apprentice, a hired servant and fourthly, an official, these must be regarded as labourers slaves are those born in the house and the rest

* 4 The sages have declared that the state of dependence is common to all these but that their respective position and income depends on their particular caste and occupation

* 5 Know that there are two sorts of occupations pure work and impure work Impure work is that done by slaves Pure work is that done by labourers

* 6 Sweeping the gateway, the privy, the road,

V 1-4 Persons bound to obedience A.

3 A student one studying divine science A pupil an apprentice Viramitrodaya &c

4 Their respective position depends on their caste and their income depends on their occupation A.

5-7 Unclean occupations. A

6 The term sweeping has to be construed with all four nouns, the gateway and the rest The privy i.e a hole or other receptacle of impure substances The place for rubbish i.e a place where the dust and other sweepings from the house are deposited. Viramitrodaya

and the place for rubbish shampooing the secret parts of the body gathering and putting away the leavings of food ordure and urine

* 7 And lastly rubbing the master's limbs when desired, this should be regarded as impure work. All other work besides this is pure

* 8 Till he has mastered science, let a student attend diligently on his teacher. The same conduct has to be observed by him towards his teacher's wife and son

* 9 Let him preserve chastity and beg alms lying on a low couch and using no ornaments. Let him go to rest after and rise before all (others who are staying at) his teacher's house

* 10 Let him never come or stay without his teacher's bidding. His (teacher's) call he must obey without hesitation when he is able to do so

11 Let him read at the proper time when his teacher is not averse to it sitting on a lower seat than his teacher by his side or on a bench and paying attention (to what he says)

12 Science like the current of a stream is constantly advancing towards the plain. Therefore let one studying science be humble towards his teacher

* 13 His teacher shall correct him, if he does not

8 He must obey his teacher's wife and son as much as the teacher himself. A

8-11 Vishnu XXVIII and the references in the Notes to that Chapter

9-15 Rules of conduct for a student. A

12 The current of a stream, meaning a river advances into the plain, and so does science. Therefore one engaged in studying it should always be lowly and humble. A

13-14 Gautama II, 42-44, Âpastamba I 28 29 31, Manu VIII, 299, 300

pay obedience to him scolding him or chastising him with a rope or with a small shoot of cane

14 (The teacher) must not strike him a heavy blow nor (must he beat him) on a noble part or on the chest and he must encourage him after having chastised him Otherwise the king shall punish him

*15 After having completed his studies let him give the customary present to his teacher and turn home The conduct of a pupil has been declared

*16 If (a young man) wishes to be initiated into the art of his own craft, with the sanction of his relations, he must go and live with a master, the duration of his apprenticeship having been fixed

*17 The master shall teach him at his own house and feed him He must not employ him in work of a different description and treat him like a son

*18 If one forsakes a master, who instructs him

13 Scolding him i.e. abusing him A The Nepalese MS has a better reading of this clause 'Or he shall beat him without hurting him with &c

14 A teacher though angry must not strike his pupil severely nor on a noble part, nor on the chest After having beaten him he must again encourage him If the teacher actuated by an excess of anger beats him too severely the pupil shall announce it to the king who shall punish the teacher A

15 Manus II -45 Yagnavalkya I 51 Āpastamba I 11 30 1 Gautama IX 1 Vashnu XXVIII 42

16-21 Rules for an apprentice A

16 The teacher must make an agreement in this form, Let this apprentice stay with me so and so long Viramitrodaya

17 The teacher shall cause the pupil to do the work peculiar to his own profession, and no other work and shall feed him and instruct him at his own house He shall treat him like a son and not like a labourer A

18 If a pupil forsakes his teacher though the latter has not committed a mortal sin or other heavy crime the teacher may compel him by forcible means to remain at his house A

and whose character is unexceptionable he may be compelled by forcible means to remain (at the master's house) and he deserves corporal punishment and confinement

*19 Though his course of instruction be completed, an apprentice must continue to reside at the house of his master till the fixed period has expired. The profit of whatever work he may be doing there belongs to his master

*20 When he has learnt the art of his craft within the (stipulated) period the apprentice shall reward his master as plentifully as he can and return home after having taken leave of him

21 Or, a certain fee having been agreed upon and the skill of the pupil examined the apprentice shall take (his fee) and shall not go to live in the house of another man

*22 Hired servants are of three kinds highest middlemost, and lowest. The wages due for their labour are fixed in proportion to their skill and to the value of their services

*23 Soldiers constitute the highest class, agriculturists the middle class and porters the lowest class. These are the three classes of hired servants

19 The whole gain of that work which is done by the apprentice while staying at the house of his master after completing his course of instruction belongs to the master, and not to the apprentice. A. Yâgñavalkya II 184

20 After the lapse of the stipulated period, i.e. when the time fixed for his apprenticeship has expired. A.

21 The apprentice shall receive whatever fee has been agreed upon, after his skill has been examined by the master. A. The only MS. of the earlier recension of the Nārada smṛiti breaks off at this paragraph. The remainder of the present translation has been done from the more recent recension of the Nārada smṛiti. See Intr.

*24. One appointed to manage the property (of the family) and to superintend the household, must also be regarded as a labourer. He is also termed Kauṭumbika (the general family servant)

*25 Thus have the four classes of servants doing pure work been enumerated. All the others do dirty work and are slaves, of whom there are fifteen kinds

*26 One born at (his master's) house one pur

24 The property meaning fields or ready money &c. One appointed to manage it i.e. one deputed to administrate it. Vīramitrodaya, p. 405

26-28 One born at (his master's) house one born of a female slave in the house (of her master) 'One received (by gift) one obtained by the acceptance of a gift and the like. One obtained by inheritance a slave of the father or other ancestor. One maintained during a general famine one whose life has been preserved during a period of dearth in order that he might do service (for his preserver). One pledged by his rightful owner one reduced to the condition of a pledge for a loan received (by his master). One released from a heavy debt one enslaved for debt, whose debt has been paid and who has thereby become the slave (of him who paid the debt). One made captive in a fight, one defeated in a combat and enslaved by the victorious party. One won through a wager one gained through the success of a cause which was preceded by an agreement in this form. If I am defeated in this quarrel I will be thy slave. One who has come forward declaring I am thine one who has promised of his own accord to become the slave of another man. An apostate from asceticism one who has forsaken the order of religious ascetics. One enslaved for a stipulated period one obtained through an agreement in this form, I will be thy slave for such a space of time. One who has become a slave in order to get a maintenance one who has offered himself as a slave on condition that food shall always be given to him. One enslaved on account of his connexion with a female slave by a female slave is meant a female house slave one enslaved for connexion with her is one who has married her through love and has thus been reduced to the status of a slave. One self-sold is one who has sold himself

chased, one received (by gift), one obtained by inheritance one maintained during a general famine, one pledged by his rightful owner

*27 One released from a heavy debt, one made captive in a fight one won through a wager, one who has come forward declaring I am thine, an apostate from asceticism, one enslaved for a stipulated period

*28 One who has become a slave in order to get a maintenance, one enslaved on account of his connexion with a female slave, and one self sold These are the fifteen classes of slaves as declared in law

*29 Among these the four named first cannot be released from bondage, except by the favour of their owners Their bondage is hereditary

*30 Should any one out of them (however) save his master's life when his life is in peril, he shall be released from slavery and shall take a son's share (of his master's wealth)

*31 One maintained during a famine is released from bondage if he gives a pair of oxen It is not

These are the fifteen species (of slaves) Mitāksharâ p 268
Manu VIII 415

30 This rule is applicable to any of the fifteen sorts of slaves. Mitāksharâ p 269 Other commentators cite an encounter with a tiger as an instance of a perilous situation The slave in order to obtain release from slavery must have risked his own life in rescuing his master

31 The objection that a slave cannot give a pair of oxen as he has no property of his own according to Nârada himself (V, 41) may be met by the argument that the dominion of slaves over affectionate gifts and the like is universally acknowledged just as the right of a woman to dispose of Stridhana given to her as an affectionate present. See the gloss on this text in Colebrooke's Digest, III 1 43

by labour (alone) that the value of the food consumed during a famine can be repaid

*₃₂ One pledged (is released) when his master redeems him by discharging the debt. If however he causes (the pledgee) to take him in lieu of payment he becomes equal to a purchased slave

*₃₃ It is by paying his debt with interest, that a debtor is released from slavery. One enslaved for a stipulated period recovers freedom on the expiration of that period

*₃₄ One who has come forward declaring 'I am thine' one made a prisoner in war and one won through a wager these are released on giving a substitute whose capacity for work is equal to theirs

*₃₅ An apostate from asceticism shall become the king's slave. He can never be emancipated, nor is there any expiation of his crime

*₃₆ One who has become a slave in order to get a maintenance is released at once on giving up the said subsistence. One enslaved on account of his being connected with a female slave is released on parting with her

*₃₇ That wretch who being independent sells himself is the vilest of slaves. He cannot be released from bondage

,₈ Those who are sold after having been captured by robbers and those who are enslaved by forcible means must be emancipated by the king. Their slavery is not legal

*₃₉ In the inverse order of the (four) castes

33 Yagñavalkya II 182

35 Yagñavalkya II 183

36 The *Mitaksharâ* (p 270) declares that sexual intercourse with a slave is prohibited. Yagñavalkya II 182

38 Yâgñavalkya II 182

39 As a man of the highest caste may marry a wife of an

slavery is not ordained except where a man violates the duties peculiar to his caste. Slavery (in that respect) is analogous to the condition of a wife.

*40 If one not his own master offers himself (as a slave) saying I am thine, he (to whom he has offered himself) may not dispose of him. His former master may recover him when he likes.

*41 Three persons are declared to have no proprietary right: a wife, a slave, and a son. What ever property they acquire shall be made over to him to whom they belong.

*42 He who pleased in his mind wishes to emancipate his own slave shall take from his (the slave's) shoulders a jar filled with water and smash it.

*43 He shall sprinkle his head with the water, which must contain whole grain and flowers and

inferior caste or of his own caste whereas a woman of the highest caste is forbidden to marry a man of inferior caste the same rule should be observed with regard to a slave. Viramitrodaya p 406. An ascetic who violates the duties of his order is liable to become the slave of his inferior in caste even. Mitāksharā, p 271. Yagñavalkya II 183. Manu VIII 410-414.

40 If a man after having promised to become the slave of one man enters the service of another man afterwards that other man must relinquish him. One not his own master i.e. the slave of another man. Viramitrodaya, p 411.

41 According to the standard commentators the purport of this rule is merely to indicate the want of independence of wives sons and slaves in the disposal of their property. See Professor Bühler's note on Manu VIII 416. Identical with Manu VIII 416.

42 43 The breaking of a water pot which the slave is carrying on his shoulder is said to be indicative of the discontinuance of the former slave's office to carry water. The solemn smashing of a water jar (ghaṭa-sphoṭa) forms the principal part of another ceremony of a totally different character as well viz. of the ceremony of expulsion from caste.

having declared him a free man three times he shall dismiss him with his face turned towards the east¹

SIXTH TITLE OF LAW

NON PAYMENT OF WAGES

*₁ A series of rules will be stated (next) for the payment and non-payment of labourers wages It is termed 'Non payment of Wages a title of law

*₂ A master shall regularly pay wages to the servant hired by him, whether it be at the commencement at the middle or at the end of his work just as he had agreed to do

*₃ Where the amount of the wages has not been fixed (the servant of) a trader, a herdsman and an agricultural servant shall respectively take a tenth part of the profit (derived from the sale of merchandise) of the seed of cows and of the grain

*₄ Their implements of work and whatever else

¹ The Indian MSS and some quotations insert the following paragraph here which is omitted in the Nepalese MS and in other quotations —

*₄₄ From that time let it be said that this slave is cherished by the favour of his master His food may be eaten and presents accepted from him and he shall be respected (by worthy persons)

VI 2 When the amount of the wages has been fixed by an agreement in this form I will give thee thus much it shall be divided into three parts and one part be given on three occasions viz at the commencement, middle and end of the labour This rule is applicable where the amount of the wages has been fixed The next paragraph states the rule for those cases where the amount of the wages has not been fixed *Vīramitrodaya* p 414

3 The strange term the seed of cows denotes cows milk according to the commentators *Yāgyavalkya* II 194

4 The phrase 'whatever may have been entrusted to servants for their business' is explained as referring to grain and the like

may have been entrusted to them for their business, they shall employ with due care and not neglect them wantonly

* 5 If one fails to perform such work as he had promised to do he shall be compelled to perform it first paying him his wages. If he does not perform it after having taken wages he must pay back twice the amount of his wages

6 One who abandons merchandise which he had agreed to convey to its destination shall give a sixth part of the wages. (An employer) who does not pay the wages which he had agreed to give shall forfeit those wages together with interest

* 7 A merchant who does not take a conveyance

used for agriculture. It appears from the preceding paragraph that business of every sort is intended. *Yâgñavalkya II 193*

5 *Manu VIII, 215* *Âpastamba II 11 28 2-3* *Vishnu V 153 154* *Yâgñavalkya II 193*

6 The *Ratnâkara* refers the second half of this paragraph like the first half to the special case of wages or hire promised to the carrier for the transport of goods. See *Colebrooke's Digest, III 1 92* *Yâgñavalkya II, 198*

7 A conveyance a cart or the like. 'Beasts for draught or burden horses or others. When a man hires the conveyance &c of another for the purpose of transporting merchandise and does not transport the merchandise afterwards because he has promised to pay an excessive hire he shall pay a fourth part of the promised hire to the owner of the conveyance. When however he takes the conveyance and leaves it after having completed one half of the journey he shall have to pay the whole of the hire. *Vîramitrodaya, p 420* *Yâgñavalkya II 198* Of vv 6 7 the Nepalese MS has an entirely different version as follows *6 One who abandons his work before the expiration of the term, forfeits his wages. If it is through the fault of his employer that he stops work, he shall be rewarded for as much as has been finished by him. 7 He who leaves on the road that which he had undertaken to transport shall give a sixth part of the (stipulated) wages. An employer who does not pay (wages) after having set the workman to work, (shall be

or beasts for draught or burden, after having hired them, shall be made to pay a fourth part of the hire, and the whole, if he leaves them half way

* 8 And so shall a carrier who fails to transport (the goods entrusted to him) forfeit his wages. He shall be compelled to pay twice the amount of his wages if he raises difficulties at the time of starting.

* 9 When the merchandise has been damaged by the carrier's fault, he shall have to make good every loss, not including such losses as may have been caused by fate or by the king.

* 10 For (tending) a hundred cows (a heifer shall be given to the herdsman) as wages every year, for (tending) two hundred (cows), a milch cow (shall be given to him annually) and he shall be allowed to milk (all the cows) every eighth day.

* 11 Those (cows) which a cowherd takes to

compelled to pay) the wages together with interest. This is probably the true reading as paragraphs 6 and 7 are quoted in this form in the *Vāramitrodaya* and in *Colebrooke's Digest* respectively.

8 According to the *Mitaksharâ* (p. 280) the excessive fine ordained in the second half of this paragraph shall be inflicted when a man raises obstacles on specially important occasions such as a wedding or the auspicious time for undertaking a journey. *Yâgñavalkya* I, 197

9 Merchandise pearls or other commodities which are to be transported. Damaged i.e. destroyed. In the terms merchandise and 'carrier' which are successively used in this paragraph a bull and a husbandman are included by implication. Thus it is declared in the *Madanaratna*. *Vāramitrodaya* p. 418. What the *Madanaratna* means is this that the responsibility of a husbandman for a bull used by him for the purposes of agriculture is analogous to the responsibility of a carrier for the goods he has undertaken to transport. *Vishnu* V. 155, 156. *Yâgñavalkya* II. 197

10 *Manu* VIII. 231

11 *Manu* VIII. 230. *Yâgñavalkya* II. 164

pasture every day when the night is over he shall take back again in the evening after they have eaten (grass) and drunk (water)

*12 If such a cow meets with an accident he shall struggle to protect her as best he may If he is unable (to rescue her) he shall go in haste to announce it to his master

*13 Should he neither struggle to protect (the cow) nor raise a cry, nor announce it to his master the herdsman must make good the value of the cow (to the owner) and (must pay) a fine to the king

*14 But the herdsman alone shall make good (the loss of an animal) which has strayed or been destroyed by worms or slain by dogs or met its death (by tumbling) into a pit, if he did not duly exert himself (to prevent such accidents)

*15 So if goats or sheep are surrounded by wolves and the herdsman does not come (to their assistance) he shall be responsible for any (animal) which a wolf may attack and kill

12 He shall struggle to protect the cow and if unable to protect her he shall raise an alarm. Ratnakara See Colebrooke's Digest III, 4 11

13 The second half of this paragraph is read as follows in the Nepalese MS The herdsman is to blame in that case and he shall make good the loss

14 Nearly identical with Manu VIII 232 Read *nashtam* in the text The Nepalese MS here inserts the following paragraph which is nearly identical with Manu VIII 234 'If cattle die let him give everything to the owner the tail skin the hindpart, the thigh the bladder tendons and yellow concrete bile and let him point out their particular marks

*15 Identical with Manu VIII, 235 The Nepalese MS adds the following paragraph which is nearly identical with Manu VIII 236 If they graze together in the forest without being kept in order, and a wolf suddenly jumping on one of them, kills it, the herdsman shall be free from blame in that case

*16 But for (an animal) seized by robbers, though he raised a cry the herdsman shall not be bound to pay, provided he gives notice to his master at the proper place and time

*17 It is according to these principles that all disputes arising with herdsmen have to be settled In case of the (natural) death (of an animal entrusted to his care the herdsman) is free from blame, if he can produce the tail the horns and the rest

*18 If a public woman declines to receive a man after having received her fee she shall pay twice the amount (of the fee) The same (fine shall be imposed) on a man who does not pay the (stipulated) fee after having had connexion with a woman (of this description)

*19 Should a man unnaturally abuse the person (of a public woman) or cause her to be approached by many he must pay eight times the amount (of the stipulated fee) and a fine to the same amount

*20 If a man has built a house on the ground of a stranger and lives in it paying rent for it, he may take with him, when he leaves the house the thatch the timber the bricks, and other (building materials)

*21 But if he has been residing on the ground

16 Identical with Manu VIII 233

17 The term the rest may be referred in accordance with the analogous rule of Manu to the ears hide bladder tendons the yellow concrete bile and the special proofs or marks Manu VIII 234

18 Illness however is considered as a legitimate reason for breaking an engagement of this sort Vîramitrodaya, p 422, and other commentaries

21 The delivery of the materials out of which the house has been constructed to the owner of the ground has to be regarded as a compensation for the ground having been used without authorisation from the owner

of a stranger without paying rent and against that man's wish he shall by no means take with him on leaving it the thatch and the timber

22 Hired commodities shall be restored (by the hirer) when the fixed period has expired. The hirer must make good whatever may have been spoiled or destroyed except in the case of (inevitable) accident

SEVENTH TITLE OF LAW

SALES EFFECTED BY ANOTHER THAN THE RIGHTFUL OWNER

*1 When property kept as a deposit or the property of a stranger lost (by him) and found (by another man) or stolen articles are sold in secret it has to be considered as a Sale Effected by Another than the Rightful Owner

*2 When a chattel which had been sold by another person than the owner has been recovered

22 This rule applies in the case of water jars and the like having been injured or destroyed. *Vīramitrodaya* p 421. The *Ratnākara* refers this paragraph to broken carriages and the like. See *Colebrook's Digest* III 104. Spoiled i.e. partially disfigured. Destroyed i.e. entirely ruined. Accident, when the things have been knocked against one another. *Vīramitrodaya* *ibid.*

VII 1 The term property kept as a deposit includes by implication a *Yakita* and the other species of bailments. *Vīramitrodaya*, p 374 and the other commentaries. See II Title of Law 14 15

2 The owner of a chattel which has been sold by a stranger who has no right to it, may reclaim it from any one who happens to be possessed of it. *Vīramitrodaya* p 375. *Vishnu* V 164-166, *Manu* VIII 201 202, *Yagñavalkya* II, 168. In the Nepalese MS the last clause runs as follows. The buyer who buys in secret is guilty of theft.

by the owner he may keep it No blame attaches to a sale effected in public but a clandestine sale is viewed in the same light as theft according to law

* 3 If a man buys from a slave who has not been authorized (to sell) by his master or from a rogue or in secret or at a very low price or at an improper time he is as guilty as the seller

* 4 The purchaser must not make a secret of the way in which he came by a chattel (purchased by him) He becomes free from blame if he can point out the way in which the chattel was acquired by him In any other case he is equally guilty with the vendor and shall suffer the punishment of a thief

* 5 The vendor shall restore his property to the rightful owner and shall pay to the buyer the price for which it was sold to him besides that he shall pay a fine to the king Such is the rule in the case

3 One who has not been authorized (to sell) by his master or one who has received no special permission from him (to sell the chattel) The term a slave has to be interpreted in a pregnant sense so as to include young sons and other dependent persons Viramitrodaya p 310 Vishnu V 166 Yagnavalkya II, 168

4 It appears from the detailed provisions of Brhaspati Kâtya yara and other Smṛiti writers on the subject of purchase and sale that every purchase in order to be legitimate had to be concluded in open market on a market day or hour or that at least the purchaser was required to produce the vendor when the purchase had not been made in open market Yagnavalkya II 166 The Nepalese MS inserts the following paragraph here Any purchase or sale which has been effected by another than the rightful owner must be known to be invalid this is a rule in lawsuits The quotations in the Viramitrodaya and other works prove this verse to be genuine Yagnavalkya II 170

5. Yagnavalkya II, 170

of a sale effected by another than the rightful owner

6 If any one finds a treasure which had been deposited by a stranger, he shall take it to the king Every treasure found by members of any caste belongs to the king excepting (those treasures which have been found by) members of the Brahman caste

7 A Brahman even when he has found a treasure must at once give notice to the king If the king gives it to him he may enjoy it If he does not give notice, he is (viewed as) a thief

8 Of his own property also which he had lost and found again afterwards a man must give notice to the king If he does so he may keep it as his lawful property It is not his lawful property otherwise

EIGHTH TITLE OF LAW

NON DELIVERY OF A SOLD CHATTEL

*1 When merchandise has been sold for a (certain) price and is not delivered to the purchaser it is termed Non delivery of a Sold Chattel a title of law

*2 Property in this world is of two kinds movable and immovable All that is termed merchandise in the laws regarding purchase and sale.

*3 The rule regarding the gift and receipt of

6-8 Gautama X, 36-38 43-45 Vasishtha III, 13-14, XVI
19 20 Manu VIII 30-39 Vishnu V, 56-64 Yâgyavalkya II
33-35 The position of the two last paragraphs is inverted in the
Nepalese MS

VIII, 3 Gift ——— sale. Receipt — — purchase What

merchandise is declared sixfold by the learned (what is sold) by tale by weight by measure according to work according to its beauty and according to its splendour

* 4 If a man sells property for a certain price and does not hand it over to the purchaser he shall have to pay its produce if it is immovable and the profits arising on it if it is movable property

* 5 If there has been a fall in the market value of the article in question (in the interval the purchaser) shall receive both the article itself and together with it the difference (in point of value) This law applies to those who are inhabitants of the same place but to those who travel abroad, the

is counted before selling it is said to be sold by tale Betel nuts may be mentioned as an instance 'What is sold by weight such as gold or sandal wood and the like substances which are weighed on a pair of scales What is sold by measure such as rice or the like 'By work such as animals giving milk or used for draught or burden According to its beauty, something handsome as e.g. a handsome prostitute According to its splendour or lustre, as e.g. rubies Viramitrodaya p 437 A similar exposition is delivered in the Ratnākara as quoted in Colebrooke's Digest III, 3 3

4 'The profits arising on it such as e.g. the milk of a cow Viramitrodaya p 437 The Vivādaśāntāmāni (p 55) and the Ratnākara, as quoted in Colebrooke's Digest (III 3 18) take the term *kṛyaphalam* as a Dvandva compound, denoting the work such as the carrying of burdens and the like and the profits, such as milk and the like Vishnu V 127 Yagñavalkya II 254

5 The previous paragraph contains the rule for those cases where the value of the property has increased after its sale The present rule refers to those cases where the value of the property has diminished after the sale Viramitrodaya p 437 Those who travel abroad i.e. who are in the habit of visiting other countries (for trading purposes) may claim the profit which might have accrued to them from travelling abroad Vivādaśāntāmāni, pp 55 56 Vishnu V 129 Yagñavalkya II 254.

profit arising from (dealing in) foreign countries shall be made over (as well)

* 6 If the article (sold) should have been injured or destroyed by fire, or carried off the loss shall be charged to the seller because he did not deliver it after it had been sold by him

* 7 When a man shows one thing which is faultless (to the intending purchaser) and (afterwards) delivers another thing to him which has a blemish he shall be compelled to pay twice its value (to the purchaser) and an equal amount as a fine

* 8 So when a man sells something to one person, and (afterwards) delivers it to another person, he shall be compelled to pay twice its value (to the purchaser) and a fine to the king

* 9 When a purchaser does not accept an article purchased by himself which is delivered to him (by the vendor) the vendor commits no wrong by selling it to a different person

* 10 Thus has the rule been declared with regard

6 According to Gagannâtha this rule has reference to those cases only where the purchaser has not formally asked for the delivery of the property purchased by himself. He infers from a text of Yagñavalkya that after a demand the loss shall fall on the vendor even though the property was injured in one of the modes mentioned by that authority i.e. by force majeure. See Colebrooke's Digest III 3 27. It is quite doubtful however whether the compiler of the Nârada smṛiti had this distinct on in view. Yagñavalkya II 256

8 9 Both he who shows unblemished goods, and sells blemished goods afterwards and he who sells property to one man and afterwards sells the same property to another man though the first sale has not been rescinded by the purchaser shall pay twice the value of the property sold as a fine. Vîramitodaya p 440 Yâgñavalkya II 257

9 Yagñavalkya II 255

10 Consequently where there is no agreement as to the time of

to that merchandise for which the price has been tendered. When the price has not been tendered there is no offence to be imputed to the vendor except in the case of a special agreement.

*11 It is for the sake of gain that merchants are in the habit of buying and selling merchandise of every sort. That gain is, in proportion to the price either great or the reverse.

*12 Therefore shall merchants fix a just price for their merchandise according to the locality and season and let them refrain from dishonest dealings. Thus (by adhering to these principles) traffic becomes an honest profession.

NINTH TITLE OF LAW

RESCISSION OF PURCHASE

*1 When a purchaser, after having purchased an article for a (certain) price, repents (of the purchase made by himself) it is termed Rescission of Purchase a title of law.

*2 When a purchaser after having purchased an article for a (certain) price thinks he has made a foolish bargain he may return it to the vendor on the same day, in an undamaged condition.

delivery the vendor commits no wrong by retaining a commodity sold on purpose to obtain payment. Thus according to the gloss in *Colebrook's Digest* III 3 20. The *Vīramitrodaya* (p 441) has a slightly different explanation. Where the price for a sold chattel has not been paid and the purchase concluded through a verbal engagement merely there is no offence whether it be ratified or not unless there should be an agreement in this form. This purchase cannot be rescinded.

*3 When the purchaser returns it on the second day (after the purchase has been made) he shall lose a thirtieth part of the price (He shall lose) twice as much on the third day After that time, the purchaser is bound to keep it

*4 The (intending) purchaser shall first examine an article (before purchasing it) in order to find out its good and bad qualities That which has been approved by the purchaser after close examination cannot be returned to the vendor

*5 Milch cattle may be examined for three days, animals of burden for five days, and in the case of precious stones pearls, and coral, the period of examination may extend over seven days

*6 Bipeds shall be examined within half a month a female within twice the same (space of time), all sorts of grain within ten days, iron and clothes within a single day

*7 A worn gown which is in a ragged condition and soiled with dirt cannot be returned to the vendor if it was in that blemished state at the time when the purchase was effected

*8 Wearing apparel loses the eighth part of its value on being washed for the first time the fourth

IX 3 He shall lose 1 thirtieth part he shall give one-thirtieth part more than the stipulated price Twice as much 1 e a fifteenth See Colebrooke's Digest III 3 5

5 6 For three days including the day of purchase The terms for five days &c have to be interpreted in the same way

Milch cattle such as e g female buffaloes Animals of burden such as e g young bulls Bipeds, males, 1 e male slaves Twice the same space of time a month A female a female slave Vira matrodaya pp 433 434 Manu VIII 222 Yâgnavalkya II, 177

8 9 When apparel has been given to a washerman to be washed by him, he is bound to make good the value of that

part (on being washed) for the second time the third part (on being washed) for the third time and one half (on being washed) for the fourth time

* 9 One half of the original value having been lost a quarter (of the reduced value) shall be deducted henceforth till the fringe is tattered and (the cloth) in rags In the case of tattered cloth there is no rule regarding the reduction of its value (through being washed)

* 10 There is no other way for preparing metallic apparatus of any sort than by forging it in fire according to the rules (of art) While they are being forged (the weight of) the metals is diminished by exposure in fire

* 11 Gold is not injured at all (by such treatment) On silver the loss amounts to two Palas in the hundred On tin and lead the loss is eight Palas in the hundred

12 On copper as well as on utensils made of it the loss should be known to be five Palas (in the hundred) As for iron there is no fixed rule regarding the loss arising on it because it is different in nature from the other metals

which has been spoiled by him. If it has been washed a single time he must make good its original value minus an eighth If it has been washed twice he must make good its original value minus a fourth Thus if it has been washed three times a third has to be deducted from the original value and so forth Vîramitrodaya p 372

11 1 The value of gold is not diminished on its being heated in fire Therefore as much (gold) as has been delivered to a goldsmith for making a bracelet and the like thus much shall the goldsmith restore after having weighed it Otherwise he shall be compelled to restore the loss and to pay a fine When silver a hundred Palas in weight is heated in fire the loss amounts to

13 The loss and gain arising from the preparation of cloth shall be stated (next) On yarns made of cotton or wool, the increase of value amounts to ten in the hundred

14 (This rule has reference) to large tissue (only) In the case of (tissue of) middle size, five in the hundred (is gained) In the case of very fine tissue the gain is said to amount to three Palas in the hundred

15 In the case of cloth made of the hair of an animal and of embroidered cloth, the loss amounts to one-thirtieth In the case of silk stuff and of cloth prepared from the inner bark of trees the gain is the same (as the loss in the preceding case) Nor is there any loss (in these cases)

*16 A merchant who is acquainted with the qualities of the merchandise (he deals in) must not

two Palas When a hundred Palas of tin or lead is heated in fire the loss amounts to eight Palas In the case of copper the loss shall be five Palas Artizans losing more than the above amount shall be punished Mitakshara, pp 264 265 Yagnavalkya II 178

13-15 When a blanket or the like is made of coarse woollen thread, the increase must be considered to amount to ten Palas in the hundred The same rule applies in the case of cloth and the like made of cotton thread In the case of cloth and the like of a middling quality, i.e. which is not made of very fine thread the increase amounts to five Palas In the case of cloth made of very fine thread the increase is three Palas in the hundred All these rules apply in the case of washed cloth only That is called embroidered cloth (*kārmika* or *karmakṛita*) where a circle *Svastica* or other (figure) is worked on woven cloth with coloured yarns 'Cloth made of the hair (of an animal) is where hairs are joined so as to form a piece of cloth or the like Mitaksharā pp 265 266 Manus VIII 397, Yāgyavalkya II 179 180

16 He must not annul a purchase he must not repent of it. 'He must know before concluding a purchase the loss and gain on merchandise such as horses or others, i.e. the diminution of

annul a purchase, after having once made it. He ought to know all about the profit and loss on merchandise, and its origin.

TENTH TITLE OF LAW

TRANSGRESSION OF A COMPACT

1 The aggregate of the rules settled amongst heretics, followers of the Veda (Naigamas) and others is called Samaya (compact or established usage). Thus arises a title of law termed Transgression of a Compact.

*2 Among heretics, followers of the Veda (Naigamas) guilds (of merchants), corporations (Pugas), troops (of soldiers), assemblages (of kinsmen), and other (associations) the king must maintain the usages (settled among them) both in fortified towns and in the open country.

its value in one country and the increase of its value in another country and its origin the country where it comes from. That is the meaning. *Vīramitrodaya* pp 434-435.

X 1 Heretics, Kshapayakas (Buddhist or Jain mendicants) and others who detract from the authority of the Veda. Naigamas, traders or merchants. According to the *Mitakshara* the term Naigama refers to Pāsupatas and others who uphold the authority of the Veda. The term and others is used to include corporations of learned Brahmins and other (associations). *Vīramitrodaya* p 423. The term samaya, literally compact, denotes local or caste usages, the violation of which forms the subject of the tenth title of law.

2 Of the term Naigama the commentators give the same two different interpretations as in the preceding paragraph. I have referred it to followers of the Veda because it comes immediately after the term heretics. The term pūga has three interpretations in this place. Some say it means 'companies of traders or others

*3 Whatever be their laws their (religious) duties (the rules regarding) their attendance and the (particular mode of) livelihood prescribed for them that the king shall approve of

*4 The king shall prevent them from undertaking such acts as would be either opposed (to the wishes of the king) or contemptible in their nature or injurious to his interests

*5 Mixed assemblages unlawful wearing of arms and mutual attacks between those persons shall not be tolerated by the king

Others say it denotes associations of persons differing in caste whose mode of subsistence is not fixed. The Viramitrodaya interprets it as referring to riders on elephants horses &c. In explanation of the terms *vrata* a troop of soldiers and *gana* an assemblage of kinsmen the commentators quote the following text of Kātyāyana. A multitude of united men armed with various weapons is called *vrata*. An assemblage of families is called *gana*. Manu VIII 41. Yagnavalkya II 192 &c

3 Their laws such as to speak the truth. Their (religious) duties such as the duty of going about begging alms when the night is over early in the morning. The rules regarding their attendance the duty of attending in a temple or other (public hall) for the affairs of the community when the sound of a drum or other instrument is heard. Viramitrodaya p 430. The Ratnakara interprets the term *karma* their (religious) duties by their proper occupation for a livelihood. The drift of this rule according to Ganganatha is that the king must not act otherwise than is consistent with the usages of castes or other corporations. See Colebrooke's Digest III 2 11. Yagnavalkya II 192 &c

4 'Contemptible in their nature essentially despicable such as the eating of betel which is customary among heretics and others. Injurious to his interests causing pecuniary loss &c. He shall prevent them from undertaking such acts. He shall act so that they do not undertake them. Viramitrodaya pp. 430 431

5. Mixed assemblages, meetings or gatherings of persons differing in caste. 'Unlawful wearing of arms' wearing arms without sufficient motives such as the apprehension of a danger. See Ratnākara as quoted in Colebrooke's Digest III 2 25

*6 Those who cause dissension among the members of an association shall undergo punishment of a specially severe kind, because they would prove extremely dangerous, like an (epidemic) disease if they were allowed to go free

*7 Whenever a criminal act opposed to the dictates of morality has been attempted, a king desirous of prosperity shall redress it

ELEVENTH TITLE OF LAW

BOUNDARY DISPUTES

*1 Whenever (a decision has to be given) in regard to landed property, whether it be a dike (or bridge) a field a boundary a tilled piece of ground, or a waste, it is termed a Boundary Dispute

2 In all quarrels regarding landed property or boundaries the decision rests with the neighbours the inhabitants of the same town or village the

6 An association a guild of merchants or other corporation
Viramitrodaya p 430

7 When an act tainted with the sin of covetousness or another crime and opposed to the dictates of revealed and traditional law such as e g the prostitution of widows or other (virtuous females) among heretics or other (sinner) men has been attempted, the king may redress it though it may have been practised for a long time
Viramitrodaya p 431

XI, 1 The meaning is as follows A dike an embankment for the purposes of irrigation 'A field, a cultivated piece of ground (under water) A boundary a landmark. A tilled piece of ground cultivated soil A waste uncultivated ground. When a decision has to be given in a quarrel with regard to any of these it is called a lawsuit concerning landed property or Boundary Dispute Viramitrodaya p 451

- Manu VIII 259, Yâgnavalkya II 150

(other) members of the same community, and the senior (inhabitants of the district),

*₃ (As also) with those living outside on the outskirts of the village and who live by the tillage of fields situated in those parts, and with herdsmen, bird catchers, hunters and other inhabitants of the woods

4 These men shall determine the boundary in accordance with the (old) landmarks (such as) chaff of grain coal pot sherds wells, sanctuaries trees

5 Objects of general notoriety such as ant hills artificial mounds slopes hills and the like, and fields gardens, roads and old dikes

6 When a piece of ground has been carried off by a stream, or abandoned (by the owner) or when the boundary marks have been destroyed (they shall fix the boundary) according to the inference to be drawn from (an inspection of) the spot and according to the traces of possession (held by the former owner)

*₇ Should the neighbours speak falsely when called upon to decide a question of this sort, they shall all be punished one by one by the king each having to pay the fine of the (second or) middlemost degree

*₈ The corporation, the senior (inhabitants of

3 The foresters shall only be consulted in default of cultivators whose fields are adjacent to the boundaries of the village Viramī trodaya p 456 Manus VIII 260 Yagnavalkya II 150

4 5 Manus VIII 246-251, Yagnavalkya II 151

7 Manus VIII 263 Yagnavalkya II 153 The fine of the second degree consists of 500 Panas.

8 The lower degree of punishment in the case of the persons here mentioned seems to be due to the fact that they may be supposed to be interested in the suit.

the district) and the rest shall also receive punishment one by one they shall have to pay the fine of the first degree if they make false statements

*9 The boundary should not be fixed by one man single handed though he be a reliable person This business should be entrusted to a plurality of persons because it is an affair of importance

*10 Should a single man undertake to fix the boundary (he must do so) after having kept a fast in a collected frame of mind wearing a garland of red flowers and a (red) cloak having strewed earth on his head

*11 Should there be no persons conversant (with the true state of the question) and no boundary marks then the king himself shall fix the boundary between the two estates as he thinks best

12 According to this rule let all contests be decided in regard to houses gardens reservoirs of water sanctuaries and the rest as well as the space intermediate between two villages

*13 When trees have grown on the boundary (or ridge) separating two contiguous fields the fruits and blossoms shall be assigned to the owners of the two fields in common

9 According to the Viramirodaya (p 458) this prohibition in regard to the determination of the boundary by a single man has reference to those only who are not acceptable to both parties and unacquainted with the law

10 Manu VIII 236 Yagnavalkya II 152

11 In default of neighbours and other persons conversant with the state of the matter and of trees and other boundary marks the king shall fix the boundary of his own accord He shall distribute the ground intermediate between the two villages which has become the subject of a contest between the two litigant parties and fix landmarks between the two Viramirodaya, p 460 Manu VIII

63 Yagnavalkya II 153

*14 When the boughs (or offshoots) of trees grown on the field of one man should take root in the field of another man they must be known to belong by right to the owner (of that field) because they have sprung forth in another field (than the stem of the tree)

*15 A cross road, the sanctuary of a deity a street and a public road must not be obstructed by (a place for) ordure a terrace a pit an aqueduct the edge of a thatch (syandanikâ), or the like (obstructions)

16 Should any one cause such obstruction through inadvertency or by force the king shall impose on him a fine of the highest degree

*17 The (erection of a) dike in the middle of another man's field is not a prohibited act as it may be productive of considerable advantage whereas the loss is trifling That is to be desired as (comparative) gain where there is (a slight) loss (only)

*18 There are two sorts of dikes (or water courses) one (called kheya) which is dug into the ground, and (another called bandhya) which prevents the access of water A kheya dike serves the purpose of irrigation, a bandhya dike serves to keep the water off

*19 No grain is (ever produced) without water,

14 This rule seems to be intended principally for banyans and the like trees covering a large area with their offshoots The Nepalese MS omits vv 13 14 16

15 The term syandanikâ is variously explained as denoting either the projecting roof or the eaves of a house

17 Yâgñavalkya II, 156

18 Kheya means literally what is capable of being dug, and bandhya what is capable of being stopped What is meant by these two terms may best be seen from the next paragraph.

but too much water tends to spoil the grain. An inundation is as injurious (to growth) as a dearth of water.

* 20 If a man were to put in repair a dike erected long ago but decayed without asking the permission of the owner he shall not have (the use and) profits of it.

* 21 However after the death of the owner or of another man sprung from the same race (who has succeeded to his property) he may repair the dike after having been authorized to do so by the king.

* 22 By acting otherwise he will get into trouble in the same way as the hunter (of the tale). The shafts of him are spent in vain who hits again and again one who has been hit already.

* 23 When the owner of a field is unable (to cultivate it) or dead or gone no one knows whither any stranger who undertakes its cultivation unchecked (by the owner or others) shall be allowed to keep the produce.

* 24 When the owner returns while the stranger

20 With the owner's permission any man may restore a dike &c which has fallen into decay. *Vīramitrodaya*, p. 468. *Yāgyavalkya* II 157. Read *pravṛttam* in the text.

21 The authority of the king is required because without it the profits of the dike would have to be enjoyed by the king himself. See *Yāgyavalkya* II 157.

22 The tertium comparationis in this simile has to be sought in the vanity of the effort only. *Manu* (IX 73) applies the same simile to seed i.e. semen virile spent in vain on the field i.e. wife of a stranger.

23 Unable (to cultivate the field) through want of means. A field one which has become a desert. *Vivādaśintamāni*, p. 64.

24 The owner or his son or other (descendant). The whole expense incurred in tilling the waste the cost of converting the desert into cultivated ground. *Vīramitrodaya* pp. 469-470.

is engaged in cultivating the field (the owner) shall recover his field after having paid (to the cultivator) the whole expense incurred in tilling the waste

25 A deduction of an eighth part (shall be made) till seven years have elapsed But when the eighth year arrives, (the owner) shall recover the field cultivated (by the other as his independent property)

* 26 A tract of land (which has not been under cultivation) for a year is called Ardhakhila (half waste) That which has not been (under cultivation) for three years is called Khila (waste) That which has not been under cultivation for five years is no better than a forest

27 A field which has been held by three generations in succession, and a house which has been inherited from an ancestor cannot be estranged (from its legitimate owner) by force of possession except when the king wills it so

* 28 When grain has been destroyed by cows or

25 It appears from an analogous text of Kātyāyana that this rule is intended for those cases where the owner is unable to pay for the expense incurred by the cultivator Kātyāyana says If through want of means (the owner) do not repay the expense entailed by the cultivation of the waste the cultivator shall be allowed to keep the produce minus an eighth part During eight years he may keep the (annual) produce (minus an eighth) After that period it shall belong to the proprietor

26 These definitions are inserted here because the previous rules according to the commentators apply to a desert or forest only the cultivation of which causes considerable difficulty and expense

28-42 Narada's eleventh title of law though called Boundary Disputes is in reality a collection of all legal rules relating to fields Manu and those who follow him treat the subject of damage done by cattle to crops or grass as a section of the chapter on Disputes between master and his dharma which title of law is wanting in the Nārada-smṛiti

28 Gautama XII 20.

other cattle crossing a fence, the herdsman deserves punishment in that case unless he should have done his best to keep the cattle off

* 29 When grain has been destroyed (altogether) with the root the owner of it may claim a corresponding quantity of grain (as damages) the herdsman shall be corporally punished and on his master he shall impose a fine

* 30 A cow within ten days after her calving a full grown bull a horse and an elephant shall be kept off carefully The owner of any one out of these animals is not liable to punishment (should they do mischief)

* 31 For (mischief done by) a cow he shall inflict a fine of one Masha for (mischief done by) a female buffalo two Mashas in the case of a goat or sheep (trespassing) with its young the fine shall amount to half a Masha

32 The (owners of) elephants and horses shall not have to pay any fine for they are looked upon as protectors of (the king's) subjects Impunity is (likewise) granted to (the owner of) a strayed cow,

29 The author of the Viramitrodaya (p 450) observes expressly that the *te m vadha* denotes corporal punishment and not execution in this place The other commentators agree with him Manu VIII 241, Yâgñavalkya II 161 Gautama XII 26 Vishnu V 146 The Nepalese MS omits this paragraph

30 The reason why horses and elephants have to be kept off is given in paragraph 32 Horses and elephants were used for the purposes of war principally Manu VIII 242 Yâgñavalkya II 163 &c

31 Vishnu V 140-144, Gautama XII 2.-25 Yâgñavalkya II 159

32 33 Manu VIII 242 Vishnu V, 150 Yâgñavalkya II 163 The Nepalese MS has 'a pregnant cow' for 'a strayed cow'

of one that has recently calved and of one unmanageable

33 (As also to the owner of) one that has lost her way, or broken down or stuck (in marshy ground) or (of) a bull marked with the sign of consecration Four times (the amount of the damage done) is declared (to be the fine) in the case of (a cow) whose nostrils have been pierced and who abides in the field

* 34 When the cattle lie down in the field (after grazing) the fine to be inflicted shall be double when they remain (in the field for the night) it shall be four times (the ordinary amount) when they graze in the sight (of the keeper) that man shall be punished even as a thief

* 35 When cows straying through the fault of

33 The genuineness of this paragraph appears doubtful because some of the propositions contained in it are nearly identical with the rules laid down in the paragraphs immediately preceding and following it. Besides the language of this paragraph is obscure and it is not given in any commentary nor in the Nepālese MS. The solemn ceremony of setting a bull at liberty and consecrating him to the gods with a mark on each flank is described by Viṣṇu chapter LXXXVI and in the Gr̥hya-sūtras. Piercing the nostrils of a barren cow is mentioned as an offence by Manu VIII, 325. It does not become clear why damage done by a cow of this sort should be a greater offence than damage done by an ordinary cow.

34 When they lie down in the field, after having eaten their fill. 'When they remain when they spend the night in the field after grazing Vivādaśāntāmaṃ Gaganātha &c. In the sight of the keeper thus according to Gaganātha (Colebrooke's Digest, III 4 46). The correctness of his interpretation is confirmed by Yājñavalkya II, 162. According to the Vivādaśāntāmaṃ (p 67) the meaning is this that the cattle are allowed to graze by the keeper, in the sight of the proprietor of the field and in spite of the remonstrances of the latter Viṣṇu V 145 Yājñavalkya II, 160, 162

their keeper have entered a field no punishment shall be inflicted on the owner of the cows the herdsman (alone) is punishable (for the damage done by them)

* 36 When (a herdsman) has been seized by the king or (devoured) by an alligator or struck by Indra's thunderbolt, or bitten by a serpent or fallen from a tree

* 37 Or killed by a tiger or other (ferocious animal), or smitten by a disease of any sort no offence can be imputed either to the herdsman or to the owner of the cattle

* 38 When a man claims damages for grain consumed by cattle (grazing in his field), that quantity of grain must be restored to him (by the owner of the cattle) which has been consumed in the field in the estimation of the neighbours

* 39 The cows shall be given up to their owner and the grain to the husbandman In the same way a fine shall be imposed on the herdsman when grain has been trodden down (by cows)

36 'Seized by the king employed in the king's business See Colebrooke's Digest, III 4, 52

37 This paragraph is omitted in the Nepalese MS

38 Gautama XII 26 Manu VIII 241 Yagñavalkya II 161 The Nepalese MS inserts a spurious verse here the first half of which is identical with Manu IX 37 and the second half identical with Nārada XI 22

39 The meaning of the injunction to give up the cows seems to be this, that the owner of the cows shall not at once recover them, when they have been seized by the proprietor of the field, after doing damage in the field The *Vivadaśintamānī* has a different reading of this clause *gavatram gomunā deyam* This is explained as meaning that blades of corn must be made good by the owner of cattle Similar readings are found in other commentaries as well. *Apastamba* II, 11 28 5.

40 When a field is situate on the borders of a village or contiguous to a pasture ground or adjacent to a high road the herdsman is not reprehensible for the destruction of grain (in that field) if the field is not protected by a fence

* 41 On (that side of) the field which faces the road a fence shall be made over which a camel cannot look, nor cattle or horses jump and which a boar cannot break through

* 42 A householder's house and his field are considered as the two fundamentals of his existence Therefore let not the king upset either of them for that is the root of householders

43 When his people are flourishing the religious merit and the treasure of a king are sure to be in a flourishing state as well When (the people) cease to prosper, (his merit and his treasure) are sure to abate as well Therefore he must never lose sight of (that) cause of prosperity

TWELFTH TITLE OF LAW

THE MUTUAL DUTIES OF HUSBAND AND WIFE

* 1 That title of law in which the legal rules for women and men regarding marriage and the other

40 Pasture ground a meadow reserved for feeding cows or other cattle Ratnākara. See Colebrookes Digest, III 4 27 Manu VIII 238 240 Vishnu V 147 148 Gautama XII 21 Yāgyavalkya II, 162

41 Manu VIII 239

42 This maxim shows that the compiler of the Narada smṛiti wrote for an essentially agricultural people

XII, 1 Manu IX 1

(mutual relations between them) are laid down is called The Mutual Duties of Husband and Wife

2 When a woman and man are to unite (as wife and husband) the choice of the bride must take place first of all. The choice of the bride is succeeded by the (ceremony of) joining the bride and bridegroom's hands. Thus the ceremony (of marriage) is twofold

3 Of these two parts (of the marriage ceremony) the choice of the bride is declared to lose its binding force, when a blemish is (subsequently) discovered (in either of the two parties). The Mantra (prayer) which is recited during the ceremony of joining the bride and bridegroom's hands is the permanent token of matrimony

4 When a Brahman Kshatriya, Vaisya, or Sûdra takes a wife it is best for him to take her out of his own caste and so is a member of her own caste the (most eligible) husband for a woman (of any caste)

5 A Brahman may marry three wives of different caste in the direct order of the castes and so may

2 The Smṛiti writers as a rule do not mention the act of *varana* choice of a bride at all. It appears from the next paragraph that Narada also does not place it on a par with the ceremony of marriage which is indissoluble for life

3 The choice of the bride or betrothal being dissoluble on the discovery of a blemish (in either party), it follows that the act of joining the bride and bridegroom's hands i.e. the ceremony of marriage must be indissoluble. See too paragraph 28. The particular Mantras to be recited during the marriage ceremony are given in the *Gṛhya sūtra* as

4 Āpastamba II, 6 13 1 Vasishṭha VIII 1 Gautama IV 1 Manu III 12 Yāgyavalkya I 55

5 6 It is important to note that Narada belongs to that group of Smṛiti writers who recognise the legitimacy of marriage unions between Brah and Sûdra women. Baudhāyana I 8 16 1 5

a Sûdra woman take a husband of any of the three castes above her own

6 For a Kshatriya two wives differing (from him) in caste are permitted for a Vaisya, a single wife differing (from him) in caste (On the other hand) a Vaisya woman may take a husband of two different castes, and a Kshatriya woman may take a husband of one different caste

7 Sagotras and Samânapravaras are ineligible for marriage up to the fifth and seventh degrees of relationship respectively on the father's and mother's side

*8 The man must undergo an examination with regard to his virile when the fact of his virile has been placed beyond doubt he shall obtain the maiden, (but not otherwise)

*9 If his collar bone his knee and his bones (in

Vasishtha I 24 25 Vishnu XXIV 1-4, Manu III 12-14
Yâgñavalkya I 56 57

6 The somewhat laconic terms of the original may be paraphrased as follows A Kshatriya may marry a Vaisya and a Sûdra woman besides a wife of his own caste A Vaisya may marry a Sûdra woman, besides a wife of his own caste A Vaisya woman may either take a Vaisya husband, or she may wed a Kshatriya or a Brahman A Kshatriya may either take a Kshatriya husband or she may marry a Brahman

7 A Sagotra is a relative bearing the same family name (laukika gotra) A Samânapravara is one descended from the same Rishi (vaidika gotra) See Professor Bühler's notes on Gautama XVIII 6, Âpastamba II 5 11, 15 Manu III 5 Âpastamba II, 5 11 15-16 Gautama IV 2-5 Vasishtha VIII 1 2 Baudhâyana II, 1 31-38, Vishnu XXIV 9 10 Manu III, 5 Yâgñavalkya I 53

8 Yagnavalkya I 55 It should be observed, however that the eligibility of impotent men or eunuchs for marriage is recognised in the Code of Manu (IX, 203), and that such men are very commonly married now a-days.

9 The curious disquisition on impotency is quoted in such an

general) are strongly made if his shoulders and his hair are (also) strongly made, if the nape of his neck is stout and his thigh and his skin delicate if his gait and his voice is vigorous

*₁₀ If his semen when thrown into water does not swim on the surface and if his urine is rich and foamy by these tokens may a potent man be known and one impotent by the opposite characteristics

*₁₁ Fourteen species of impotent men are distinguished by the sages according to the rules of science including both the curable and incurable The rules regarding them shall be given in order

*₁₂ One naturally impotent one whose testicles have been cut out a *Pakshashandha*, one who has been deprived of his potency by a curse of his spiritual guide or by illness or by the wrath of a deity

*₁₃ One jealous, a *Sevya* one whose semen is (evanescent) as air a *Mukhebhaga*, one who spills

early compilation as *Aparārka's* Commentary of the *Yâgñavalkya smṛiti* (twelfth century) which goes far to prove its genuineness *Aparārka's* gloss on this passage scanty as it is has proved useful in elucidating some of the difficult terms occurring in it and in establishing the correct readings Besides I have been able to avail myself of some valuable remarks kindly communicated to me by the late Dr Haas the well known connoisseur of Indian medicine

₁₀ An analogous text is quoted from the *Smṛiti* of *Kātyāyana* He is called impotent whose urine froths not and whose faeces sink in water and whose generative organ is deficient in erection or seminal juices See *Colebrooke's Digest* V 5 330

₁₂ One naturally impotent (*nisargashandha*) one born without the capacity of producing semen *Apararka* This category seems to be synonymous with the *sahaga* of *Susruta*, the standard writer on medicine *Pakshashandha*, according to *Aparārka*, is one capable of approaching a woman once in every half month (*Paksha*)

₁₃ The jealous man, *īrshyāshandha* seems to be identical with the *īrshyaka* of *Susruta*, *qui nisi alius cujusdam ineuntis feminam*

his semen one whose semen is devoid of strength one timorous and one who is potent with another woman (than his wife) only (these are the fourteen sorts of impotent persons)

*14 Among these the two first are incurable the one called Pakshashandha should wait for a month the (three) named after him shall have to wait for a year

*15 Those four among whom in the above enumeration the one jealous comes first, shall be avoided by their wives just like an outcast, though they may have been enjoyed by them

*16 For the wife of one who spills his semen or whose semen is devoid of strength though they may have discharged their marital duties another husband must be procured after she has waited for half a year

*17 If a man is timorous he fails when he is about

conspectu non potest The term *sevyā* is obscure enough Dr Haas proposes to read *ka sevyāśka* or *ka mevyāśka* or *kasekyāśka* for *ka sevyāśka* The *āsekyā* is a species of impotent person according to Susruta It may be however that the reading *sevyā* is correct and denotes one with whom sexual intercourse is possible *Mukhebhaga*, is qui ore prout cunno utitur The revolting practice in question is repeatedly referred to e g by Nārada himself VI 19 according to the commentators, and I 183 Dr Haas proposes to read *mushkabhagna* one deprived of the scrotum It may be argued however that this category has already been referred to in paragraph 12 and that the reading *mushkabhagna* is objectionable for metrical reasons According to Aparārka, *ākshipta*, the next term means *is cuius semen in coitu retro (aut susum) fluit* *moghabhaga* means *'is cui semen ad propagationem aptum non est* *salīna* means *is cuius penis coitu facto collabitur* and *anyāpati* the last term means *is qui cum alia femina praeter uxorem potest*.

15 Like an outcast (*patita*). Dr Haas assigns a different meaning to the term *patita*, viz *'is cuius penis collabitur* and refers to such expressions as *divagaḥ patati*, *'penis collabitur* in the *Bhāvaprakāśa*.

to approach his wife such a feeble man shall be stirred up by bringing before him other men's wives or young maidens &c

* 18 If a man is potent with another woman but impotent with his own wife his wife shall take another husband This is a law promulgated by the Creator of the world

19 Women have been created for the sake of propagation the wife being the field and the husband the giver of the seed The field must be given to him who has seed He who has no seed is unworthy to possess the field

20 Let a maiden be given in marriage by her father himself or by her brother with the father's authority or by her paternal grandfather or by her maternal uncle or by her agnates or cognates

21 In default of all these by the mother in case she is competent (to act as guardian) if she be wanting in competence the distant connexions shall give a maiden in marriage

22 If no such person be in existence let the maiden have recourse to the king and let her with his permission betake herself to a bridegroom of her own choice,

20 21 The object of these rules is to prevent that any marriageable maiden should remain unmarried which is a great point in the eyes of a Hindu legislator Vishnu XXIV 38 39 Manu V 151 Yâgñavalkya I 63 The Nepalese MS refers to the maternal instead of the paternal grandfather

22 23 This is the custom of Svayamvara self choice (of a bridegroom) so well known from the Indian epics It appears from this paragraph that Narada does not allow this custom to be practised except with certain restrictions See however the next paragraph Age Manu says (IX, 94) that a man at the age of thirty shall marry a maiden of twelve and a man aged twenty four years a maiden of eight Gautama XVIII 20 Vasishtha XVII

23 Who belongs to her own caste and is a suitable match in point of descent morality age and sacred learning Let her discharge her religious duties in common with him, and bear children to him

24 When a bridegroom goes abroad after having espoused a maiden let the maiden wait till her menses have passed three times, and then choose another bridegroom

25 Let no maiden suffer the period of maturity to come on without giving notice of it to her relations Should they omit to give her in marriage, they would be equal to the murderers of an embryo

26 He who does not give such a maiden in marriage commits the crime of killing an embryo as many times as her period of menstruation passes by without her having a husband

27 Therefore a father must give his daughter in marriage once (for all) as soon as the signs of maturity become apparent (By acting) otherwise he would commit a heavy crime Such is the rule settled among the virtuous

67 68 Manu IX 90-92 Vishnu XXIV 40 Yāgñavalkya I, 64 Baudhāyana IV 1, 14 Read *anurūpaṃ* in the text

24 This is the law in the case of a woman recently married, when consummation has not yet taken place As for the conduct enjoined to one left by her husband when they have been married for some length of time see paragraphs 96-101

25 Maturity according to a well-known versus memorialis generally commences after completion of the tenth year One aged eight years is a child one aged nine years is a maiden one aged ten years is a virgin after that time she is a marriageable woman See Parāśara VII, 6, Samvarta V 66 Gautama XVIII 22 Vasishtha XVII 69, Vishnu XXIV, 41, Manu IX 4 93

26 Vasishtha XVII 71, Yāgñavalkya I, 64, Baudhāyana IV 1 13

27 It must not be inferred from this rule that Nārada is not

28 Once is the (family) property divided once is a maiden given in marriage, and once does a man say 'I will give' each of these three acts is done a single time only among the virtuous

29 This rule applies to the five (first) marriage forms only, beginning with the Brahma (form of marriage) In the three (others) beginning with the Âsura form the (irrevocable) gift (of a maiden to a particular suitor) depends on the qualities (of the suitor)

30 Should a more respectable suitor (who appears) eligible in point of religious merit fortune and amiability, present himself, when the nuptial gift has already been presented (to the parents by the first

an advocate of infant marriage like many other Smṛiti writers Thus Dakṣha says Let a maiden be given in marriage at the age of eight years thus justice will not be violated Angiras rules that a maiden must be given in marriage in her tenth year by all means Râgamartanda Yama and Parâsara declare that it is a heavy sin if she continues to reside at her father's house after having reached her twelfth year of age Vasishṭha Gautama Viṣṇu and Manu (IX, 93) ordain to give a maiden in marriage before she attains the age of puberty

28 This is the general rule regarding the indissolubility of the marriage tie Divers important restrictions of this rule are stated in paragraphs 24 29 30 96-101 Identical with Manu IX 47 The Nepalese MS inserts two paragraphs here 'Soma springs into existence when the marks of puberty appear and enjoys women Their breast is a Gandharva, and Agni (the god of fire) is said to dwell in their menstrual discharge Therefore let a father give his daughter in marriage before the marks of puberty have appeared in her and before the menses and the breasts have been developed and before she has been enjoyed by Soma and the rest The first paragraph occurs in the Pañġatantra as well See the Petersburg Dictionary s v Gândharva

29 Other legal consequences of the choice of a particular form of marriage are stated in the law of inheritance See XIII, 9

30 Out of the various meanings of the term *rulka*, the

sutor) the verbal engagement (previously made) shall be annulled

31 Let no man calumniate a faultless maiden neither must one calumniate a faultless sutor. When, however, there is an actual defect it is no offence if they dissolve their mutual engagement.

32 When a man after having made a solemn promise of giving his daughter in marriage to a certain sutor does not deliver her afterwards he shall be punished by the king like a thief in case the sutor be faultless.

33 But when a man gives a maiden in marriage who has a (secret) blemish without first making (the defect) known the king shall visit him with punishment of the very gravest kind.

34 When a man from hatred declares a certain maiden to have lost her virginity he shall pay one hundred *Paṇas* as a fine unless he be able to give proofs of her disgrace.

* 35 When a man after having plighted his faith to a maiden abandons her, although she is faultless he shall be fined and shall marry the maiden even against his will.

36 Affliction with a chronic or hateful disease

nuptial gift, presented to the parents of the bride by the bridegroom is no doubt the only one which fits in this place as it appears from the preceding paragraph that this rule is applicable principally to the *Āsura* form of marriage i.e. marriage by purchase. *Yāgñavalkya* I 65

31 *Manu* VIII 225 IX 72 *Yāgñavalkya* I, 66, *Vishnu* V 47

32 *Manu* IX 71 *Yāgñavalkya* I 65.

33 *Manu* VIII 224 IX 73, *Yāgñavalkya* I 66, *Vishnu* V 45

34 *Vishnu* V 47 *Manu* VIII, 225, *Yāgñavalkya* I 66

35 *Yāgñavalkya* I 66

36 It does not become quite clear how far the last term in the

deformity the loss of her virginity a blemish and proved intercourse with another man these are declared to be the faults of a maiden

37 Madness loss of caste impotency misery to have forsaken his relatives and the two first faults of a maiden (in the above text) these are the faults of a suitor

38 Eight nuptial rites have been ordained for the (four) castes by which wedlock may be entered into The Brahma form is the first of these the Pragapatya form is the second

39 The Arsha, Druva Gândharva and Asura forms follow next The Rākshasa form is no worse than the one preceding it and the Paisāka is declared to be the eighth

40 In the Brahma form a maiden decked with ornaments is given (to the bridegroom) after he has been invited and honourably received (by the father) When he has been addressed with the words Fulfil your sacred duties together (with her) it is termed the Pragapatya form

41 When (the father) receives (from the bridegroom) a dress and a bull and a cow it is termed the Arsha form When she is given, before the

enumeration anagatabhāṭa differs in import from the two terms immediately preceding it Perhaps it denotes one pregnant or who has had a child with another man

37 To have forsaken his relatives It is evident that certain near relatives must be meant as e.g. Manu says (VIII 389) that a mother father wife or son must not be forsaken

38-43 Manu III 20 21 27-34 Yagnavalkya I 58-61
Āpastamba II 5 11 17-II 5 12 2 Gautama IV 6-13
Baudhayana I 20 1-9 Vasishtha I 28-30 Vishnu XXIV
17-26

40 See Professor Bühler's note on Manu III 30 27

altar to a priest who officiates at a sacrifice it is termed the Daiva form

42 The union of a willing maiden with her lover is the fifth form termed Gandharva When a price is (asked for the bride by the father and) taken (by him) it is the form termed Āsura

43 The Rākshasa form is declared to consist of the forcible abduction of a maiden Sexual intercourse with a woman during her sleep or while she is unconscious (of the approach of a man) constitutes the eighth form the basest of all

44 Of these the (first) four beginning with the Brahma form are declared to be lawful the Gandharva form is common (to all castes) the three forms which come after it are unlawful

45 (Besides the lawful wives) seven other sorts of wives are mentioned in order who have previously been enjoyed by another man Among these the Punarbhu (woman twice married) is of three kinds, and the Svairinī (wanton woman) is fourfold

*46 A maiden not deflowered but disgraced by the act of joining the bride and bridegroom's hands, is

43 The term *pramatta* translated by unconscious may either refer to a temporary or to a permanent derangement of the maiden's intellect

44 *Manu* III, 23-26 *Āpastamba* II 5 12 3 *Gautama* IV 14, 15 *Baudhayana* I 20 10-16 *Vishnu* XXIV 27 28

45 The fact that Nārada treats Punarbhus 'remarried women' as being only one degree superior to Svairinis 'wanton women' and belonging like the latter to the category of women previously enjoyed by another man indicates the low estimation in which he holds remarried women though remarriage is a perfectly legitimate proceeding, according to him in certain cases *Manu* V 163 *Yāgyavalkya* I 67 Read *trivīdhā* in the text

46 The act of joining the bride and bridegroom's hands 'the marriage ceremony' *Vasishtha* XVII 20 *Manu* IX, 176 *Vishnu* XV 8

declared to be the first Punarbhû She is required to have the marriage ceremony performed once more (when she is married for the second time)

*47 One who after having left the husband of her youth and betaken herself to another man returns into the house of her husband is declared the second (Punarbhû)

*48 When a woman on failure of brothers in law is delivered by her relations to a Sapinda of the same caste, she is termed the third (Punarbhû)

*49 When a woman no matter whether she have children or not, goes to live with another man through love her husband being alive she is the first Svairinî (wanton woman)

*50 When a woman, after the death of her husband rejects her brothers-in law or other (relations) who have come to her, and unites herself with a stranger through love she is called the second (Svairinî)

*51 One who having come from a (foreign) country, or having been purchased with money or being oppressed with hunger or thirst gives herself up to a man, saying I am thine —is declared to be the third (Svairinî)

*52 When a woman after having been given in

47 Manu IX 176 Vasishtha XVII 19 Vishnu XV 9

48 This is an allusion to the custom of Niyoga or levirate as described below in paragraphs 80-88

49 Yâgnavalkya I 67

50 The wanton woman here referred to is apparently one who after the death of her husband, declines to perform the custom of Niyoga with a brother-in law or other relation and goes to live with a stranger instead of it

51 I am thine, this is the formula by which a slave that is to be delivers himself to his future master See above V 27

52 The term utpannasâhasâ has been translated by force

marriage by her spiritual guides in a manner corresponding with the usages of her country, (is afterwards married) to another by force, she is called the last Svairinī

¹ 53 Thus has the law been declared with regard to Punarbhū and Svairinī wives. Among them each preceding one is inferior to the next in order and each following one is superior to the one preceding her.

* 54 The issue of those women who have been purchased for a price belongs to the begetter. But when nothing has been paid for a woman her offspring belongs to her legitimate husband.

55 When seed is strewn on a field without the knowledge of the owner the giver of the seed has no share in it: the fruit belongs absolutely to the owner of the field.

56 When seed carried off by a torrent of water or by a gust of wind grows up in the field of a

The *Mitākṣharā* p. 17 interprets it by *upannivyaabhīkṣarā* 'through adultery' which seems to mean that an elopement is referred to and not a forcible abduction. In that case however this species of wanton women would coincide entirely with the species described in paragraph 49. Besides it appears from what is said in paragraph 53 that the species of wanton women described in paragraph 52 must be less reprehensible than the three species described in the preceding paragraphs.

53 The Nepali MS has the following two paragraphs instead of 53. Among the four sorts of Svairinī women, the last respectively are preferable to those previously mentioned: the treatment of their offspring is optional, as regards inheritance funeral oblations of balls of meal and water, and other concerns. To Punarbhū women the same rule is applicable as to Svairinī women. Among them (also) each preceding one is inferior &c.

54 This rule shows that the purchase and sale of women must have been a very common proceeding in the times of Nārada.

56 Manu IX 54

stranger the owner of that field shall obtain the produce none of the produce shall belong to the owner of the seed

57 When a full grown bull begets calves with the cows of another man while roaming in his cow pen the calves shall belong to him who owns the cows in vain has the bull spent his strength

58 When seed is sown in the field of another with the consent of the owner of that field the offspring is considered to be the common property of the giver of the seed and the owner of the soil

*59 Grain cannot be produced without a field nor can it be produced without seed Therefore offspring belongs by right to both the father as well as the mother

*60 Nor is (legitimate) offspring produced when a man meets a woman at another house than her own That is declared adultery by those conversant with (the law on) this subject, unless she have come into (the man's) house of her own accord

*61 A man is not punishable as an adulterer for having intercourse with the wife of one who has left his wife without her fault or of one impotent or consumptive if the woman herself consents to it.

57 Manu IX 50 &c

58 Manu IX 53

60 When a woman enters the house of her paramour of her own accord to have intercourse with him there is no offence (on his part) *Vivādaśāntikā* p 112 The Nepalese MS reads this paragraph differently When a man has intercourse with a woman who has a protector living at another man's house it is termed adultery by those conversant with the subject, unless &c

61 When a man has connexion with a married woman forsaken by her husband, or whose husband is impotent or feeble he is not punishable in case the woman consents to it even though he meet her at her own house *Vivādaśāntikā* p 112

*62 To meet with another man's wife in an unseasonable hour or place and to sit converse, or dally with her these are the three grades of adultery

*63 When a woman and a man have meetings at the confluence of two rivers at a Ghât in a garden or in a park it is also termed adultery

64 By the employment of go-betweens, dispatch of letters and other criminal proceedings of various kinds, adultery may be found out by the knowing

*65 If one touches a woman in a place (where it is) improper (to touch her) or allows himself to be touched (in such a spot) all such acts done with mutual consent, are declared to be adultery

*66 Bestowing attentions (on a woman) sporting (with her), touching her ornaments and clothes sitting with her on a bed all such acts are (also) declared to be adulterous

*67 If a man seizes a woman by the hand by a braid of hair or by the border of her gown, or if he calls out 'Stop, stop,' all such acts are (also) declared to be adulterous

68 By the sending of clothes ornaments, garlands of flowers drinks, food and fragrant substances adultery may (also) be discovered by the wise

62 Manu VIII, 354 Yâgñavalkya II 284

63 Manu VIII 356 The Nepalese MS omits paragraphs 64 65 and arranges paragraphs 66-69 differently

65 Identical with Manu VIII 358 A place (where it is) improper (to touch her) For a different interpretation of this term see Professor Buhler's note on Manu VIII 358

66 'Bestowing attentions on a woman doing what is agreeable to her Vivadakintâmanî, p 110 Nearly identical with Manu VIII, 357

67 Such acts when committed against another woman than one's own wife constitute the offence of adultery That is the

g Vi tîmanî, p 110 Yâgñavalkya II, 284.

*69 When a man actuated by vanity folly or braggartism, declares himself, that he has enjoyed the love of a certain woman, that is also termed an adulterous proceeding

70 When a man has connexion with a woman of his own caste a fine of the highest degree (shall be inflicted on him), and the middling fine when he has connexion with a woman of lower caste and capital punishment when he has connexion with a woman of superior caste

71 (When he has connexion) with a maiden against her will, he shall have two fingers cut off If the maiden belongs to the highest (or Brahman) caste death and the confiscation of his entire property (shall be his punishment)

*72 When however he has connexion with a willing maiden it is no offence but he shall bestow ornaments on her, honour her (with other presents) and (lawfully) espouse her

*73 A mother mother's sister mother in law, maternal uncle's wife father's sister paternal uncle's (wife) friends (wife) pupils wife sister sister's friend, daughter in law,

*74 Daughter spiritual teacher's wife Sagotra relation one come to him for protection a queen a female ascetic a nurse an honest woman and a female of the highest caste

70 Manu VIII 374-385 Yâgñavalkya II 286, Vishnu V 40 41 Gautama XII, 2, 3 Baudhâya II 3 52 &c.

71 Manu VIII 366 367 Yâgñavalkya II 288

72 Manu VIII 366 Yâgñavalkya II, 288 The Nepalese MS reads * When a man of the same caste has intercourse with a willing maiden

73 75 Manu XI 171 Yâgñavalkya III 231 33 &c.

75 When a man carnally knows any one out of these (twenty) women he is said to commit incest For that crime no other punishment than excision of the organ is considered (as a sufficient atonement)

* 76 When a man has sexual connexion with (small) cattle he shall pay one hundred (Panas) as a fine (for sexual connexion) with a cow he shall pay the middling fine and the same (for sexual connexion) with a low caste woman

* 77 Let a punishment be inflicted by the king on him who has intercourse with a woman with whom it is forbidden to have intercourse, and let such sinners be cleared (of the moral offence committed by them) by performing a penance

* 78 Intercourse is permitted with a wanton woman who belongs to another than the Brahman caste, or a prostitute or a female slave or a female not restrained by her master (nishkāsinī), if these women belong to a lower caste than oneself but with a woman of superior caste intercourse is prohibited

75 The fact that female ascetics (pravragita) are reckoned by Nārada among those female whose violation is incest—literally an offence as heavy as the violation of a spiritual teacher's bed—constitutes an important difference between his teaching and Manu's. Manu ordains the same punishment for the violation of female ascetics as for the violation of the wives of actors and singers and other abandoned women. See Professor Buhler's note on Manu VIII 363. All commentators declare that this rule is applicable in the case of guarded women only. The Vivadaśinī tāmanī says that the term mother denotes a stepmother in paragraph 75.

76 Vishnu V 43 44 Manu VIII 385 Yāgyavalkya II 289

78 The two terms, svairinī a wanton woman and abrahmanī 'one not belonging to the Brahman caste' have to be connected. A wanton woman, a self-willed unchaste woman. Nishkāsinī

* 79 When however such a woman is the kept mistress (of another man intercourse with her) is as criminal as (intercourse) with another man's wife. Such women though intercourse with them is not (in general) forbidden must not be approached, because they belong to another man.

* 80 Should the husband of a childless woman die, she must go to her brother-in-law through desire to obtain a son after having received the (required) authorization from her Gurus.

81 And he shall have intercourse with her till a son be born. When a son is born he must leave her. It would be sinful intercourse otherwise.

82-84 (He shall approach) a woman who has brought forth male issue and who is praiseworthy free from passion and without amorous desire. He must have anointed his limbs with clarified butter or with oil which has not lost its natural condition and must turn away his face from hers and avoid the contact of limb with limb. For this (custom is

means one who has left her family according to the Madanaratna and a female slave not restrained by her master according to *Yājñanervara Madhava-tārya* and the rest. *Vīramitrodaya* p 510. See above V 39.

79 *Yājñavalkya* II 290. The Nepalese MS reads when they belong to another man.

80-88 *Manu* IX 59-64 143 *Yājñavalkya* I 69 *Gautama* XVIII 4-8 *Apastamba* II, 10 27 2 3 *Vasishtha* XVII 55, 66 *Baudhayana* II 4 9-10. Regarding the history of the Indian levirate see my *Outlines of a History of Hindu Law* (Tagore Law Lectures for 1883) pp 153 154.

80 The Gurus intended are the teacher sub teacher, and officiating priests of the deceased husband. See Professor Bühler's note on *Vasishtha* XVII 56. According to *Vasishtha* the authority of both the Gurus and relatives is required. The relatives are referred to by Narada himself paragraphs 82-84.

practised) when the family threatens to become extinct for the continuation of the lineage and not from amorous desire. He must not approach a woman who is with child or blamable or unauthorized by her relations. Should a woman procreate a son with her brother in law without having been authorized thereto by her relations

85 He is declared an illegitimate and incapable of inheriting by the expounders of the Veda. So when a younger brother has intercourse without authorization with the wife of his elder brother

86 Or an elder brother with the wife of his younger brother, they are both declared to commit incest. After having been authorized by the Gurus he shall approach the woman and advise her,

* 87 In the manner previously stated (as if she were) his daughter-in law. He becomes pure when the ceremony for the birth of a male child is performed. (Let him approach her) once or till she has conceived. When she is pregnant she is even as (his daughter-in law)

86 According to Gagannātha's reading of these texts the appointment to raise offspring may be given by the king also where Gurus and relations are wanting. The same clause is found in the Nepalese MS. He shall advise the woman means, according to Gagannātha, he shall teach her the general illegality of receiving the caresses of other men, and the particular legality of an appointment to raise up offspring. See Colebrooke's (Gagannātha's) Digest, IV 4 147

87 His daughter in law a brother's wife is considered as similar to a daughter in law according to Gagannātha. See loc cit. The ceremony for the birth of a male child (Pumsavana) which has the procreation of a son for its object is usually performed at the time when the mother perceives the first signs of a living conception. It has to be observed that the reading of this paragraph is uncertain and its rendering conjectural. The Nepalese MS agrees with Gagannātha.

* 88 Should the man or woman behave otherwise impelled by amorous desire they shall be punished severely by the king Otherwise justice would be violated

* 89 Husband and wife must not lodge a plaint against one another with their relations or the king when a quarrel has arisen through passion, which has its root in jealousy or scorn

90 When husband and wife leave one another from mutual dislike, it is a sin except when a woman who is kept under supervision commits adultery

* 91 When a married woman commits adultery her hair shall be shaved she shall have to lie on a low couch receive bad food and bad clothing and the removal of the sweepings shall be assigned to her as her occupation

* 92 One who wastes the entire property of her husband under the pretence that it is (her own) Strīdhana or who procures abortion or who makes an

89 The term *sambandha*, literally connexion has been rendered by a quarrel It can hardly be referred to friendly connexion (with another man or woman) in this place The prohibition of lawsuits between wife and husband may be compared to the analogous prohibition in the case of husband and wife of suretyship division of property contracting of debts, and giving evidence

91 *Mitramitra* in the *Vīramitrodaya*, p 520 quotes this text as proving that an adulteress even has a claim to maintenance He interprets it as follows When a woman has committed adultery through amorous desire, she shall be shaved and compelled to lie on a low couch bad food and a bad dwelling shall be given to her for her maintenance and the removal of rubbish shall be assigned to her as her occupation *Yâgñavalkya* I, 70

92 As for the constituents of Strīdhana, or separate property of a woman, see XIII 8

attempt on her husband's life, he shall banish from the town

* 93 One who always shows malice to him or who makes unkind speeches or eats before her husband he shall quickly expel from his house

* 94 Let not a husband show love to a barren woman or to one who gives birth to female children only or whose conduct is blamable, or who constantly contradicts him if he does (have conjugal intercourse with her), he becomes liable to censure (himself)

* 95 If a man leaves a wife who is obedient pleasant spoken skilful virtuous and the mother of (male) issue the king shall make him mindful of his duty by (inflicting) severe punishment (on him)

96 When a faultless maiden has been married to a man who has a blemish unknown (before his marriage), and does not repair to another man (after discovering it), she shall be enjoined to do so by her relations If she has no relations living she shall go (to live with another man) of her own accord

97 When her husband is lost or dead when he

93 He shall expel from his house This according to an interpretation mentioned by *Gagannātha* means that he shall banish her from the principal habitation assigning to her a separate dwelling within his close See *Colebrooke's Digest* IV 1, 63 This interpretation is hardly correct though it is interesting as it shows the tendency of the commentators to explain away those laws under which married women were deprived of their claim to maintenance *Manu* IX 80 81, *Yāgñavalkya* I 73, &c

96 This rule shows that a marriage is dissoluble on the discovery of a blemish as well as a betrothal See XII, 3

97 'Lost' i.e. gone no one knows whither This text, or an identical text of *Parāśara*, has been frequently appealed to by the

has become a religious ascetic when he is impotent, and when he has been expelled from caste these are the five cases of legal necessity in which a woman may be justified in taking another husband

98 Eight years shall a Brahman woman wait for the return of her absent husband or four years if she has no issue after that time she may betake herself to another man

99 A Kshatriya woman shall wait six years or three years, if she has no issue a Vaisya woman shall wait four (years) if she has issue, any other Vaisya woman (i e one who has no issue) two years

100 No such (definite) period is prescribed for a Sudra woman whose husband is gone on a journey Twice the above period is ordained when the (absent) husband is alive and tidings are received of him

101 The above series of rules has been laid down by the Creator of the world for those cases where a man has disappeared No offence is imputed to a woman if she goes to live with another man after (the fixed period has elapsed)

modern advocates of the remarriage of widows in India Vasishtha XVII 74

98 99 Vasishtha XVII 75-80 Manu IX, 76 77 Gautama XVIII 15-17

100, 101 The Nepalese MS has three paragraphs instead of these two as follows — 100 No such period is ordained for a Sudra woman nor is justice violated (in her case) The utmost limit for her is a year especially if she has no issue 101 This term has been ordained for the wives of absent husbands who are dead Twice the same term is ordained when (the absent husband) is alive and tidings are received of him 101 a The (other) term has been ordained for those who have issue (?). Afterwards, no offence is imputed to a woman who goes to live with another man.

102 This body of laws is applicable to the offspring of unions in the direct order of the castes the offspring of a marriage union in the inverse order of the castes is said to be (produced by) a confusion of castes

103 There are Anantara Ekântara and Dvyantara sons both in the direct and inverse order of the castes

104 (Of this description are) the Ugra, Pârasava and Nîshada (who are begotten) in the direct order, as well as the Ambashtha Mâgadha and Kshattrî who spring from a Kshatriya woman

105 One of these (latter castes) is begotten in the direct order of the two (others) it must be known that they are (begotten) in an inverse order The Kshattrî and the rest are begotten in an

102 In the direct order of the castes i.e. where a man of higher marries a woman of lower caste In the inverse order of the castes i.e. where a woman of higher marries a man of lower caste

103-113 Manu X, 6-41 Gautama IV 16-28 Vasishtha XVIII Baudhâyana I 16 6-12 17 passim Vishnu XVI 1-7 Yâgñavalkya I 91-95

103 An Anantara is the son of a father whose caste is only one degree higher or lower than the caste of the mother An Ekântara is the son of a father whose caste is two degrees higher or lower than the caste of the mother A Dvyantara is the son of a father whose caste is three degrees higher or lower than the caste of the mother The Nepalese MS throughout superior to the Indian MSS reads as follows — 103 An Ugra, Pârasava and Nîshâda are (begotten) in the direct order and are declared to be the sons of Sûdra women with husbands of the (three) higher castes 104 Of a Brahman woman are born a Kandâla, a Suta and a Vaidehaka they are declared to spring in an inverse order from their union with husbands of different caste 105 An Ambashtha Mâgadha and Kshattrî are the sons of a Kshatriya woman Of these, one is born in the direct and two are born in the inverse order 106 a Of a Vairya woman are born an Ambashtha Yavana, and Âyogava.

inverse order the (three) mentioned first in the direct order

106 Sacraments beginning with the boiling of gruel three times seven in number (shall be performed) by them. The son (of a Brahman) with a Brahman woman is equal in caste (to his father). The son (of a Brahman) with a Kshatriya woman is an Anantara.

107 An Ambashtha and an Ugra are begotten in the same way by Kshatriya men and on Vaisya women respectively. An Ambashtha is an Ekantara the son of a Brahman with a Vaisya woman.

108 In the same way a son called Nishâda

Of these one is born in the inverse and two are born in the direct order. 106 b. A Sûta and the other Pratilomas (men born in the inverse order) who are begotten contrary to order are declared to partake of the series of three times seven sacraments beginning with the Pâka ceremony (cooking food). 106 c. The son &c.

106 The meaning of the first half of this paragraph is somewhat obscure. The term *triṣṭapa* three times seven has been connected with *samskârâḥ* 'sacraments'. The sacraments are peculiar to those mixed castes which are procreated in the direct order of castes. See Manu X 41. The boiling of gruel (*larupâka*) being mentioned as the first sacrament it appears that the sacraments here referred to are identical with the *yagñas* sacrifices of which there are twenty one according to the usual theory. See Gautama XVIII 18-20 and Professor Weber's paper on Vedic Sacrificial Rites *Indische Studien* X p 320. It is also possible to connect the clause three times seven with them. The number of twenty one mixed castes procreated in a direct order is received by adding the fifteen castes springing from a further mixture between the mixed castes (Manu X 31) to the six principal mixed castes procreated in a direct order. For *vaṁ matâḥ* as I have conjectured the MSS read *koshīhataḥ* which might be rendered (The twenty one sacraments beginning with the boiling of gruel have to be performed by them) out of a pot. However the correctness of this reading is liable to considerable doubt. The Nepalese MS reads, *te samskârâḥ pakādyâs teshāṁ triṣṭapako garāḥ*. This is perhaps the original reading. See the preceding note.

springs from the union of a Kshatriya with a Sûdra woman. A Sûdra woman obtains from a Brahman a son (called) Parasava who is superior (to the Nishâda)

109 Thus have the sons born in the direct order of castes been declared. The two sons called Sûta and Mâgadha as well as the Ayogava

110 And the Kshatt^r and Vaidehaka are begotten in the inverse order of castes. The Sûta is declared to be an Anantara begotten by a Kshatriya on a Brahman woman

111 Similarly the Mâgadha and Ayogava are the sons of Vaisya and Sûdra fathers (and of a Brahman mother). A Brahman woman obtains of a Vaisya father an Ekântara son the Vaidehaka

112 A Kshatriya woman (obtains of a Sûdra) an Ekantara son called Kshatt^r. A Dvyantara son in the inverse order the most abject of men, because he is the fruit of sinful intercourse

113 *Kandâla* by name is born of a Sûdra when a Brahman woman forgets herself (with him). Therefore must the king take special care to prevent women from sinful intercourse with men of different caste

THIRTEENTH TITLE OF LAW

THE LAW OF INHERITANCE

*1 Where a partition of the paternal property

113 The Nepalese MS inserts the following before the clause beginning with the word Therefore — Because confusion of the castes springs up where the king keeps no watch over them

XIII, 1 The term 'sons' includes by implication grandsons and

is instituted by the sons, it is called by the learned Partition of Property a title of law

* 2 The father being dead the sons shall divide the estate as they ought, (and so shall) daughters (divide the property) of their mother (when she dies) or failing daughters their issue

3 (The distribution of the property shall take place) when the mother has ceased to menstruate and the sisters are married or when the father's sexual desire is extinguished and he has ceased to care for worldly interests

* 4 Or let a father distribute his property among his sons himself, when he is stricken in years either allotting a larger share to the eldest son or (distributing the property in any other way) following his own inclination

more remote descendants The term 'paternal' includes property of the grandfather and more remote ancestors as well Mandlik's *Mayūkha* p 33 (IV 3 1 Borrodaile) Analogous remarks are found in most other Commentaries

2 Their issue (*tadanvayaḥ*) According to the usual explanation, the male issue of the daughters is meant However there is nothing in the text to warrant an exclusion of the female issue of daughters *Manu* IX 104 192 *Yagñavalkya* II 117 *Gautama* XXVIII, 1 *Baudhayana* II 3 8

3 According to the *Mayūkha* the clause when the sisters are married has to be construed with both the preceding and following clauses the marriage of the sisters being required to precede both a division in the father's lifetime and a division in the mother's lifetime See *Mayukha* p 33 (translation p 39) The *Dayabhāga* has a totally different reading of this text which is censured in the *Vīramitrodaya*. *Gautama* XXVIII 1

4 The *Dayabhāga* (II 82 Colebrooke) states correctly that the unequal distribution referred to in the last clause of this text must be different from that sort of unequal distribution under which the eldest son is to receive a larger share than the rest The *Mitāksharā* school on the other hand, recog two different modes of

*5 Or the senior brother shall maintain all (the junior brothers) like a father, if they wish it or even the youngest brother if able the well being of a family depends on the ability (of its head)

*6 Property gained by valour or belonging to a wife and the gains of science are three kinds of wealth not subject to partition and so is a favour conferred by the father (exempt from partition)

*7 When the mother has bestowed (a portion of) her property on any (of her sons) from affection, the rule is the same in that case also for the mother is equal to the father (as regards her competence to bestow gifts)

*8 What (was given) before the (nuptial) fire what (was given) during the bridal procession the husband's donation, and what was received from her brother mother or father that is called the six fold property of a woman (Stridhana)

distribution only one equal and the other with the customary deductions in favour of the eldest son middlemost son &c. according to the order of seniority The writers of this school, therefore have endeavoured to refute the interpretation of the *Dâyabhâga*. See *Vîramitrodaya* transl p 54—*Manu* IX 112 foll, *Yagñavalkya* II 114 *Apastamba* II 6 14 *Gautama* XXVIII 2, *Vishnu* XVII 1 *Baudhâyana* II 3 9

5 As the management of the property and government of the family, under this rule may devolve on the youngest brother even it follows that the middlemost brother may get it a fortiori This is expressly stated in the *Dayabhâga* (III 1, 15 *Colebrooke*) *Manu* IX 108

6 What was received at the time of obtaining a wife is here called the 'wealth of a wife' meaning effects obtained on account of marriage *Dayabhaga* (VI 1 13 *Colebrooke*), *Manu* IX 206, *Yâgñavalkya* II 119

8 It may be asked by whom the gifts presented before the nuptial fire and during the bridal procession i.e. at two different stages of the marriage ceremony must have been presented in

*9 Such property of a woman shall go to her offspring, if she have no offspring it is declared to go to her husband (if she was married to him) according to one of the four (praiseworthy) marriage forms beginning with the Brâhma form (if she was married) according to one of the other forms it shall go to her parents

*10 When one brother maintains the family of another brother who is engaged in studying science he shall receive a share of the wealth gained by that study though he be ignorant (himself)

*11 A learned man is not bound to give a share of his own (acquired) wealth against his will to an unlearned co heir unless it have been gained by him using the paternal estate

*12 Two shares let the father keep for himself

order to be Stridhana. As all the other gifts classed as Stridhana are presented by relations it may be inferred that the nuptial gifts have to come from the same quarter Kâtjâyana declares expressly that a gift made by a stranger is not Stridhana. Manu IX 194 Yagnavalkya II 143 144 Vishnu XVII 18

9 See XII 38 foll The commentators are of opinion that the Gândharva form of marriage follows the same rule as those four forms which are referred to in the first half of this text. This however is an artificial interpretation which has merely been devised for the purpose of making this text agree with an analogous rule of Manu (IX 196) Manu IX 195-197 Yagnavalkya II 144 145 Vishnu XVII 19-21 Vasishtha XVII 46 Baudhaya II 2 3 43 Read *katurshvahu* in the text

10 Srikrishna observes that where the support has been offered by several unlearned co heirs they shall all of them be made to participate in the gains of science See Colebrooke's Dayabhaga VI 1 15 note

11 'The word "paternal" intends joint property Dayabhaga VI 1 17 Manu IX 206, Yagnavalkya II 119, Gautama XXVIII, 30

12 The rule which assigns two shares to a father distributing

when distributing his property The mother shall receive the same share as a son (when the son divide the property) after her husband's death

*13 To the eldest son a larger share shall be allotted and a less share is assigned to the youngest son The rest shall take equal shares, and so shall an unmarried sister

*14 The same rule applies to sons of a wife (Kshetrakas) lawfully begotten on her For sons of lower caste a decrease in the shares according to the order (of their caste) is ordained, in case they are born of women legally married

*15 When a father has distributed his property amongst his sons that is a lawful distribution for them (and cannot be annulled) whether the share of one be less or greater than or equal to the shares of the rest, for the father is the lord of all

his property himself is referred to the father's self acquired property in the Mitaksharâ school, and to ancestral property in the Bengal school This difference of interpretation is connected with the varying views taken in the several schools of law of the extent of the patria potestas in questions of proprietary right and inheritance See Dnyabhaga II 35 Colebrooke Mitâkshara I 57 Colebrooke Yagnavalkya II 1-3 Vishnu XVIII 34

13 The share of an unmarried daughter, according to the translation here given, would have to be equal to the shares of the middlemost brothers According to Gargannâtha, all that is meant by Narada is thus that the daughter shall receive some portion of the property, the precise amount of it being left undecided See Colebrooke's Digest, V, 171 — Manu IX, 113-118 Vishnu XVII 37 XVIII 35 Baudhâyana II 3 9 Gautama XXVIII 5-13 Vasishtha XVII 42 foll., Âpastamba II, 6 14 6-10 Yagnavalkya II 114 124

14 For the rules regarding the procreation of a Kshetraka son see XII, 80-88 Gautama XXVIII, 35-39 Vasishtha XVII, 47-50 Vishnu XVIII 1-31 Baudhâyana II, 3, 10, Yagnavalkya II, 125, Manu IX 149-156

15 The writers of the Bengal school give this text its plain

*16 A father who is diseased, or angry or absorbed by (sinful) worldly interests or who acts illegally has not the power to distribute his property (as he likes)

*17 The son of a maiden a son obtained through a pregnant bride and one born of a woman (whose transgression was) unknown (at first and is found out subsequently) of these the mother's husband is regarded as the father and they are declared to be entitled to shares of his property

*18 A maiden's son whose father is unknown and whose mother is not legally married (to his father) shall give a funeral ball (of rice) to his maternal grandfather and inherit his property

*19 Those sons who have been begotten by one or by many on a woman not authorized (to raise issue to her deceased husband) shall all be dis-

meaning viz that a father may distribute his property among his sons as he pleases They add however that in doing so he must be guided by lawful motives such as compassion on an incapable son partiality for a pious son and the like See *Dâyabhāga* II 74, 75 *Colebrooke's Digest*, V 1 32 The *Mayukha* on the other hand declares that this rule of *Nārada* had legal force in the former ages of the world only See *Mandlik's Mayūkha* p 35 (transl p 43) *Yāgyavalkya* II 116

16 This rule relates to the case where the father through perturbation of mind occasioned by disease or the like or through irritation against any one of his sons or through partiality for the child of a favourite wife makes a distribution not conformable to law *Colebrooke's Dayabhaga* II 83 The *Mitāksharā* (I 2 13 14) cutting down the privileges of the father everywhere interprets this rule as a prohibition of any other mode of unequal distribution except that by which the customary deductions are made in favour of the eldest son &c

17 18 *Manu* IX 170-172 *Yāgyavalkya* II 129 *Vishnu* XV 10-17 *Vasishtha* XVII, 21-23

19 Regarding the rule of *Nivoga* or appointment of a married

inherited they are the sons of their (respective) begetters only

*20 They shall offer the funeral ball (of rice) to their begetter in case their mother had been obtained for a price if no price has been paid for her they shall give the funeral ball to the husband (of their mother)

*21 One hostile to his father or expelled from caste or impotent or guilty of a minor offence shall not even take a share (of the inheritance) if he is a legitimate son much less so if he is a (Kshetrage) son of the wife (only)

*22 Persons afflicted with a chronic or acute disease or idiotic or mad or blind or lame (are also incapable of inheriting) They shall be maintained by the family but their sons shall receive their respective shares (of the inheritance)

*23 The sons of two fathers shall give the funeral

woman or widow to raise offspring to her husband see XII 80-88
Manu IX, 143

20 See XII 54

21 22 Manu IX 201-203, Âpas'amba II 6 14 1 15
Gautama XXVIII 23 40 43 Vasishtha XVII 52 53 Baudhâ
yana II 3 37-40 Vishnu XV 32-37 Yagñavalkya II 140 141

21 The commentators are at variance as to the precise meaning of the term hostile to his father Thus the Sarasvativilâsa declares it to denote one who forgets himself so far as to say He is not my father The Dayakramasangraha says it means one who beats his father According to Gagannatha and the Ratnakara it means one who attempts his father's life or commits other hostile acts against him (marazadikrit) and who fails to offer the customary funeral oblations to his father after his death See Colebrooke's Digest V 4 320

22 Atrophy or pulmonary consumption is instanced as a chronic and leprosy as an acute disease, in the Ratnâkara See Colebrooke's Digest loc. cit.

23. 'The adoptive father literally the man who owns the

ball (of rice) and the water oblations to each of the two (fathers) singly and shall receive one half of the property left by their natural and adoptive fathers

*24 That part on (of the property) which belongs to a reunited coparcener is declared to be absolutely his own. So when one of the sharers has no issue it shall go to the rest (after the death) of those who are childless

*25 If among several brothers one childless should die or become a religious ascetic the others shall divide his property excepting the Śrīdhana

mother (K. netrika) The son of two fathers is no doubt one procreated by Nivoga on the wife of one impotent, &c. It is not equally clear why he is to obtain one half only of the property left by his two fathers as he is elsewhere declared to succeed to both. According to the Ratnākara this rule relates to the case where the natural father has a son begotten in lawful wedlock and the husband of the mother also has by some means (kathamait) obtained male issue by himself begotten. See Colebrooke's Digest V 4 242 — Yāgñavalkya II 127. Manu IX 145 190. Baudhāyana II 3 18 19.

24 For several other interpretations of this difficult text see Colebrooke's Digest V 8 433. It has to be observed, however, that the reading translated here differs from the reading translated by Colebrooke.

25 26 The fact that the widow is invested with a claim to maintenance merely under this text, whereas the leading texts of Yāgñavalkya and Vishnu constitute her heir to the property of a husband who has died without leaving male issue has caused some difficulty to the commentators. Thus Madana says that this text must be held applicable to the widow of an undivided or reunited coparcener only who is given a mere claim to maintenance by all writers of the Mitāksharā school. The writers of the Bengal school on the other hand recognise the widow's right of inheritance in the case of undivided coparceners even. It appears however from the order of heirs given in 49-51, that Narada does not make the widow an heir in any case.

25 Manu IX 212. Yāgñavalkya II, 138. Vishnu XVII, 17. Gautama XVIII 31.

*26 They shall make provision for his women till they die in case they remain faithful to the bed of their husband Should the women not (remain chaste), they must cut off that allowance

*27 If he has left a daughter her father's share is destined for her maintenance They shall maintain her up to the time of her marriage afterwards let her husband keep her

*28 After the death of her lord, the relations of her husband shall be the guardians of a woman who has no son They shall have full authority to control her, to regulate her mode of life and to maintain her

*29 When the husband's family is extinct or contains no male or when it is reduced to poverty or when no one related to it within the degree of a *Sapinda* is left the father's relations shall be the guardians of a woman

*30 It is through independence that women go

26 *Yâgñavalkya* II 142

27 They shall maintain her literally they shall give her a share See par 13 where a share is allotted to an unmarried sister The maintenance of the daughter includes no doubt the obligation to defray the expense of her marriage *Yâgñavalkya* II 141

28 All the commentators declare that the right of guardianship goes in the order of proximity Thus without (her guardian's) consent she may not give away anything to any person nor indulge herself in matters of shape taste smell and the like and if the means of subsistence be wanting he must provide her maintenance *Gagannâtha* See *Colebrooke's Digest* IV 1 13

29 The Nepalese MS and the commentaries insert the following text here * If both families are extinct, the king is declared to be the protector of a woman he shall provide for her and punish her when she has swerved from the path of duty

30 31 *Vasishtha* V, 1 2, *Baudhâyana* II 3 44 45 *Gautama*

to ruin though born in a noble family Therefore the Lord of creatures has assigned a dependent condition to them

*₃₁ The father protects her during her infancy the husband protects her when she is grown up and the sons (protect her) in her old age A woman is unfit to enjoy independence

*₃₂ What is left (of the father's property) when the father's obligations have been discharged, and when the father's debts have been paid shall be divided by the brothers in order that the father may not continue a debtor

*₃₃ For those (brothers) for whom the initiatory ceremonies have not been duly performed by their father they must be performed by the (other) brothers, (defraying the expense) from the paternal property

XVIII 1 Manu IX 3 V 148 Yagñavalkya I 8, Vishnu XXV 12 13

₃₀ They go to ruin i.e. they are guilty of disloyalty and other offences thus because they do not know what is legal for those who live exactly according to sacred ordinances and because they cannot be instructed they would violate the duties of their class and the like Gagannatha See Colebrooke's Digest, IV 1 4

₃₂ The term *pitr̥dayebhyaḥ* when the father's obligations have been discharged is differently explained by different commentators Thus Varadaraga (Burnell's *Vyavahāranirṇaya* p 18) says it denotes the father's funeral rites and the like Akyuta as quoted in Colebrooke's *Dāyabhaga* I 47 note refers it to sums of which payment has been promised by the father Manu VIII, 166 IX, 104 Baudhayana II 3 8 Gautama XXVIII, 1 Yagñavalkya II 117 Read *dattvarṇam* in the text.

₃₃ There appears to be some doubt as to what is meant here by the term *samkara* 'initiatory or sacramental ceremonies, some commentators including the ceremony of marriage in that term and others declaring the initiatory ceremonies to terminate with the investiture with the sacred thread. Yāgñavalkya II, 124

* 34 Or no paternal wealth being left the initiatory ceremonies must be invariably performed for their brothers by those previously initiated contributing (the required) funds from their own portions

* 35 One who being authorized to look after the affairs of the family charges himself with the management (of the family property) shall be supported by his brothers with (presents of) food, clothing and vehicles

* 36 When the fact of a legal partition should be called into question the decision of the dispute (which has arisen) among the sharers shall be founded on (the testimony of) kinsmen the written deed recording the division of the estate, and the separate transaction of business

* 37 Among unseparated brothers the performance of religious duties is single When they have come to a partition they have to perform their religious duties each for himself

35 Some commen ators explain this text as having reference to one who generously declines to take his share at the time of partuon His share shall be made up afterwards by the other brothers contributing severally a portion of their sha es However there seems to be more foundation for the opinion of those commentators who interpret this text as ordaining the allotment of a preferential share or the presentation of special gifts to the manager of the family property See Colebrooke s Digest V 2 108

36 The commentators observe that the contest here referred to does not turn on the mode but on the fact of partition See Colebrooke s Digest, V, 6, 381 The business here referred to consists of agriculture and the like acts according to the Mitāksharâ Yāgyavalkya II, 149

37 The term 'religious duties' according to the Mitāksharâ, relates principally to the five Mahayagñas great sacrifices or 'sacraments' Before division they are performed by one brother generally the eldest brother as representative of the rest Manu IX, 111, Gautama XXVIII 4

*38 Giving receiving cattle food houses fields and servants must be regarded as separate among divided brothers and so must cooking religious duties income and expenditure (be kept separate for each of them)

*39 (The acts of) giving evidence of becoming a surety of giving and of taking may be mutually performed by divided brothers but not by unseparated ones

*40 It (brothers or others) should transact such matters as these publicly with their co heirs they may be presumed to be separate in affairs even though no written record (of the partition) be in existence

*41 Those brothers who for ten years continue to live separate in point of religious duties and business transactions should be regarded as separate, that is a settled rule

*42 When a number of persons the descendants of one man are separate in point of (the performance of) religious duties business transactions and work-

38 Giving and receiving without consulting each other Purchase of cattle and the like See Colebrooke's Digest V 6 380 The upshot of a long discussion of this text by Gagannatha is this that none of the acts mentioned here may be regarded as conclusive evidence by itself a great deal of collective evidence of all sorts having to be adduced in each case See Colebrooke's Digest, V 6 387

39 Yâgñavalkya II 52

41 The term brothers is here used to denote coparceners generally *Smṛitibandhikā* XVI, 14 The *Sarasvativilāsa* (§ 812 Foulkes) contests the correctness of this interpretation. The Nepalese MS does not give this paragraph and it is elsewhere attributed to *Br̥haspati*

42, 43 Religious duties, prescribed observances such as the five great sacrifices (*Mahâyagñas*). Business transactions such as

ing utensils and do not consult each other about their dealings,

*43 They are quite at liberty to perform, according to pleasure all (such transactions as) the gift or sale of their own shares They are (in fact) masters of their own wealth

*44 One born after partition shall receive his father's property exclusively Or if other sharers have reunited with the father they shall come to a division (with the son born after partition) Such is the law

*45 The legitimate son of the body the son begotten on a wife (Kshetrāga), the son of an (appointed) daughter the son of a maiden the son received with the wife the son secretly born

*46 The son of a remarried woman the son cast off, the adopted son the son bought the son made and the son who has offered himself, are declared to be the twelve sons

*47 Among these six are kinsmen and heirs and six are not heirs (but) kinsmen Each preceding one is declared to be superior (to the one

trading and the like acts 'Working utensils such as household furniture the separate possession of which is indicative of partition The meaning is that when they are separated thus each may give sell or otherwise dispose of (his share) Mayūkha, p 51 (transl p 76)

44 Manu IX 216 Yagñavalkya II 122, Gautama XXVIII 29 Vishnu XVII 3 This text is not found in the Nepalese MS, nor is it commonly quoted in the Digests

45-47 49 Manu IX, 158-184 Vishnu XV, 1-29 Vasishṭha XVII 12-39 Baudhāyana II, 2, 3 14-32 Yāgñavalkya II 128-132

45, 46 Regarding the meaning of the technical terms in this text see the corresponding portion of the Code of Manu and the notes on them in Professor Bühler's translation

following next) and each following one inferior (to the preceding one)

[48 Where some doubt arises in regard to a house or field the possession of which has suffered an interruption (the doubt) may be removed by consulting a writing or persons who know all about the enjoyment (of the property in question by its occupant) or witnesses]

*49 After their father's death these (sons) shall succeed to his wealth in order Whenever a superior son is wanting the one next to him in rank is entitled to succession

*50 On failure of a son the daughter (succeeds) because she continues the lineage just like (a son) both a son and a daughter continue the lineage of their father

*51 On failure of daughters the Sakulyas (are to succeed) and (after them) the Bāndhavas next, a member of the same caste In default of all that (wealth) goes to the king

48 This text which comes in very awkwardly between pars 47 and 49 is apparently spurious as has been pointed out long ago by Professor Bühler It is not given in the Nepalese MS

50 Gimutavāhana and other writers of the Bengal school restrict the daughter's right of succession as declared in this text to those daughters who are neither barren nor widowed See Dayabhāga IV 2 10 However there is nothing in the words of the original to warrant this restriction Âpastamba II 6 14 4

51 52 Manu IX 185-189 Yâgñavalkya II 135 136 Vasīṣṭha XVII, 81-84, Viṣṇu XVII 4-14 Âpastamba II, 6 14 2-3 Gautama XXVIII 21 41 42

51 The term Sakulya is apparently used to denote the agnates and Bāndhava to denote the cognates Therefore the last term sagati cannot be referred to blood relationship at all and must denote connexion by membership of the same caste It is true that the commentators explain it as denoting descent from the same Rishi See Colebrooke's Digest, V 8 448

*52 Unless it should be the property of a Brahman
A king devoted to duty must allot a maintenance
to his women Thus has the law of inheritance
been declared

FOURTEENTH TITLE OF LAW

HEINOUS OFFENCES

*1 Whatever act is performed by force (sahas)
by persons inflamed with (the pride of) strength
is called Sahasa (a heinous offence) sahas (force)
means strength in this world

*2 Manslaughter robbery an indecent assault
on another man's wife and the two species of insult
such are the four kinds of Heinous Offences

*3 It is again declared to be threefold in the
law books viz (heinous offences) of the first middle-
most and highest degree The definition of each
kind shall be given as follows

*4 Destroying reviling disfiguring or otherwise

52 His women i.e. the women of the deceased proprietor
Vignānesvara Nilakantha and other commentators declare that
the term still woman cannot denote the legitimate wives of a
deceased her and must therefore mean his concubines This in-
terpretation has been called forth no doubt, by the fact that in the
opinion of these commentators the inheritance of one sonless
belongs to the widow in the first instance and does not go to
others where a legitimate widow is in existence

XIV 1 The term Sāhasa, literally 'violence' is used to denote
violent deeds or heinous offences of every sort Manu VIII 332
Yāgyavalkya II 230

2 This text is omitted in the Nepalese MS

4 Destroying i.e. totally annihilating the fruits and other
objects mentioned in this text Reviling i.e. abusing using bad

(injuring) fruits roots water and the like or agricultural utensils is declared to be Sahasa of the first degree

* 5 (injuring) in the same way clothes cattle food drink or household utensils is declared to be Sahasa of the middlemost degree

* 6 Taking human life through poison weapons or other (means of destruction) indecent assault on another man's wife and whatever other (offences) encompassing life (may be imagined) is called Sâhasa of the highest degree

* 7 The punishment to be inflicted for it must be proportionate to the heaviness of the crime (so however as) not to be less than a hundred (Panas) for Sahasa of the first degree, whereas for Sahasa of the middlemost degree the punishment is declared by persons acquainted with the law to be no less than five hundred (Panas)

* 8 For Sâhasa of the highest degree a fine amounting to no less than a thousand (Panas) is ordained (Moreover) corporal punishment confiscation of the entire property banishment from the town and branding as well as amputation of that limb (with which the crime has been committed), is declared to be the punishment for Sahasa of the highest degree

* 9 This gradation of punishments is ordained for every (caste) indiscriminately excepting only corporal punishment in the case of a Brahman A Brahman must not be subjected to corporal punishment.

language Disfiguring injuring so far only as to leave the form intact Viramitrodaya p 499

8, 9- The ambiguous term vadha in these two paragraphs is

*10 Shaving his head banishing him from the town branding him on the forehead with a mark of the crime of which he has been convicted and parading him on an ass shall be his punishment

*11 Those who have committed Sâhasa of either of the two first degrees are allowed to mix in society after having been punished but if a man has committed Sâhasa of the highest degree no one is allowed to speak to him even when he has received punishment

*12 Theft is a special kind of it The difference between (Sâhasa and theft) is as follows Sâhasa is where the criminal act consists of a forcible attack theft is where it is done by fraud

*13 That (theft) is again declared to be three-fold by the wise according to the (value of the) articles (purloined) whether articles of small middling or superior value have been stolen

*14 Earthenware a seat a couch bone wood leather grass and the like legume grain, and prepared food these are termed articles of small value

*15 Clothes made of other material than silk cattle other than cows and metals other than gold are (termed) articles of middling value, and so are rice and barley

explained as denoting corporal punishment, and not execution by the commentators

9 10 Gautama XII 46 47 Vishnu V 2-8 Yâgñavalkya II 270 Manu VIII 124 319-380

12 A criminal act (adhik) i.e. injuring another man's property through a forcible attack i.e. violently is called theft equivalent to Sâhasa a criminal act done by fraud is called ordinary theft Vîramitrodaya p 490 Manu VIII 332

13 Yâgñavalkya II 275

14 Manu VIII 326-329

*16 Gold precious stones silk women men, cows elephants horses and what belongs to a god, a Brahman or a king these are regarded as articles of superior value

17 Taking away by any means whatsoever the property of persons asleep or disordered in their intellect or intoxicated is declared to be theft by the wise

18 Where stolen goods are found with a man, he may be presumed to be the thief (The possession of) stolen goods may be inferred from a luxurious mode of life Suspicion arises where a man is seen in bad company or indulges in extravagance

*19 Those who give food or shelter to thieves seeking refuge with them or who suffer them (to escape) though able (to arrest them) partake of their crime themselves

*20 Those who do not come to offer assistance when people are crying out (for help) within their hearing or when property is being taken away are likewise accomplices in the crime

*21 That series of punishments, which has been ordained by the wise for the three kinds of Sahasa is equally applicable to theft according as it concerns one of the three species of articles in their order

22 When cows or other (animals) have been lost,

16 See the Indian law of prescription where the property of Brahmans and kings is declared to be exempt from the ordinary rules regarding limitation Manu VIII 3 3

18 Yagnavalkya II 266

19 Those who give food or any other assistance to a thief or who suffer a thief to escape though able to seize him have to be punished like thieves Vivadaśintamam p 93 Manu IX 278 Yagnavalkya II 276

20 Manu IX, 275 This text is omitted in the Nepalese MS

or when (other) property has been taken away forcibly experienced men shall trace it from the place where it has been taken

23. Wherever the footmarks go to whether it be a village pasture ground or deserted spot (the inhabitants or owners of) that place must make good the loss unless they can prove the footmarks to go out of that place again

24. When the footmarks are obscured or interrupted, because (they lead to) broken ground or to a spot much frequented by other people the nearest village or pasture ground shall be made responsible

25. Where two persons have gone the same road the offence as a rule shall be imputed to him who stood charged with other crimes before or who associates with suspicious characters

26. *Kanaalas* executioners and other such persons as well as those who are in the habit of roaming at night, shall institute a search (after the thieves) in the villages those living outside (of inhabited places) shall search (for them) outside

27. When the thieves are not caught the king must make good (the loss) from his own treasury. By showing himself remiss (towards criminals), he would incur sin and would offend both against justice and his own interest

23. *Yagñavalkya II*, 271

26. *Manu IX*, 267

24. *Yagñavalkya II* 272

FIFTEENTH AND SIXTEENTH TITLES OF LAW

ABUSE AND ASSAULT

*1 Abusive speeches couched in offensive and violent terms regarding the native country caste family and so forth (of a man) are termed Abuse (a title of law)

*2 It is divided into three species called respectively Nish/hura Aslila and Tivra The punishment for each increases in severity according as the insult is of a more (or less) serious nature

*3 Abuse combined with reproaches has to be regarded as Nish/hura abuse couched in insulting language is Aslila charging one with an offence causing expulsion from caste is called Tivra by the learned

*4 Hurting the limbs of another person with a hand foot weapon or otherwise or defiling him

XV XVI 1 Thus e.g. when a man says The Caudas (Bengalis) are quarrelsome he abuses another man's native country When a man says Brahmins are very avaricious he abuses another man's caste When he says The V svamitras are a ferocious race he abuses another man's family The clause and so forth is added in order to include abusive speeches levelled against learned men artisans or the like persons whose learning or art has been abused Violent terms i.e. terms which ought never to be used. Mitaksharā, p 28, Viramirodaya p 48

3 Abuse combined with reproaches is when e.g. a man says What a fool, or What a rascal Abuse couched in insulting language is when a man says 'I will visit your sister or the like Charging one with a mortal sin causing expulsion from caste such as e.g. the drinking of spirituous liquor See loc cit.

with ashes or other (impure substances) is termed Assault

* 5 There are three species of that also as it may be either light or of a middling sort or heavy according as it consists in the raising (of a hand or weapon for the purpose of striking a blow) or in an unexpected attack or in striking a wound

* 6 Stealing articles of small middling, or superior value is called the three kinds of Sahasa there the thorny weeds (sinners) should be extirpated

* 7 In both kinds (of insult) five cases are distinguished when the respective innocence or guilt of the two parties has to be established

* 8 When two parties have been guilty of insult and both have commenced to quarrel at the same time they shall suffer the same punishment in case that no difference (in their respective culpability) becomes apparent

* 9 He who is the first to offer an insult is decidedly criminal he who returns the insult is likewise culpable but the one who began shall suffer the heavier punishment (of the two)

6 The above translation of this paragraph follows the reading of the MSS. If that reading be correct this paragraph contains a rule relating to the subject of theft or Sahasa. The quotations have a different reading under which this paragraph has to be closely connected with the preceding one and has to be referred equally to the three degrees of assault

7 The Nepalese MS and the commentaries insert the following paragraph here * "When an insult has occurred between two men engaged in a violent quarrel he who suffers the insult patiently is struck but the offender is punishable

8-10 The one who has first commenced a quarrel shall receive the heavier punishment of the two That man is liable to punishment who persists in hostility When it is impossible to ascertain any

*10 When both parties are implicated equally he of the two shall receive punishment who follows up his attack whether he was (originally) the aggressor or the defendant

*11 If a Svapāka Meda *Kandāla* cripple one who gains his substance by killing (animals), an elephant driver one deprived of his caste for non performance of the ceremony of initiation a slave or one who treats a Guru or spiritual teacher with disregard

*12 Should offend a superior he shall be punished by whipping him on the spot Nor do the sages regard bodily injury done to a man of this stamp as (an offence equal to) theft

*13 Should any such low person abhorred by men, insult another man (his superior) that man himself shall punish him The king has nothing to do with the penalty (to be inflicted on him)

*14 For these people are the refuse of human society and their property is (likewise) impure The king also is at liberty to whip them but he must not amerce them with a fine

15 A Kshatriya who reviles a Brahman must

difference in the culpability of the two parties their punishment shall be equal Viramitrodaya p 472 Read pūrvam

11 Svapaka literally dog cooking is the name of a particular degraded tribe whose only office is to act as public executioners Meda is the name of another mixed caste *Kandālas* are the lowest caste of all see XII 113 The Nepalese MS and the commentaries read *shandha* a eunuch instead of Meda

12-14 When a Svapaka or the like should have insulted an Ārya or member of the three higher castes honourable men shall be entitled to punish them in person When the (honourable men) are unable to do so the king shall punish them but he must not confiscate their property Viramitrodaya p 472

15 17 Near y identical with Manu VIII 267 69

pay one hundred (*Panas*) as a fine A Vaisya (must pay) one and a half hundred or two hundred A Sudra deserves corporal punishment

16 A Brahman shall be fined fifty (*Panas*) for calumniating a Kshatriya in the case of a Vaisya the fine shall be half of fifty (i.e. twenty five), in the case of a Sudra (it shall amount to) twelve (*Panas*)

17 When a twice born man offends against a member of his own caste, (he shall pay) twelve (*Panas* as a fine) When he utters calumnies which ought never to be uttered, the fine shall be twice as high

18 Even he who in accordance with fact (contemptuously) calls another man one eyed lame or the like (names), shall be fined by the king not less than one *Kârshâpana*

19 One must not tax with his offence a man who has done penance according to law or who has received due punishment from the king By transgressing this rule one becomes liable to punishment.

20 Two persons a Brahman and a king are declared to be exempt from censure and corporal punishment in this world for these two sustain the visible world

* 21 One who calls an outcast an outcast, or a thief a thief, is equally criminal with those whom he taxes (with their offence) (If he reproaches them) without reason he is twice as guilty as they are

17 According to the commentators of Manu the term 'calumnies which ought never to be uttered' has to be referred to insinuations against the honour of a man's mother, sisters or other female relatives See Professor Buhler's note on Manu VIII 269

18 Manu VIII 274 Yâgyavalkya II 204

22 A once born man (or Sudra) who insults members of a twice born caste with gross invectives shall have his tongue cut out for he is of low origin

23 If he refers to their name or caste in terms indicating contempt an iron rod ten Angulas long shall be thrust red hot into his mouth

24 If he is insolent enough to give lessons regarding their duty to Brahmans the king shall order hot oil to be poured into his mouth and ears

*25 With whatever limb a man of low caste offends against a Brahman that very limb of his shall be cut off such shall be the atonement for his crime

26 A low-born man who tries to place himself on the same seat with his superior in caste, shall be branded on his hip and banished or (the king) shall cause his backside to be gashed

27 If through arrogance he spits (on a superior) the king shall cause both his lips to be cut off, if he makes water (on him) the penis if he breaks wind (against him) the buttocks

28 If he pulls (a superior) by the hair (the king) shall unhesitatingly cause his hands to be cut off, likewise (if he seizes him) by the feet, beard neck or scrotum

29 If a man breaks the skin (of his equal) or

22 He is of low origin because the Sudra caste has been produced from Brahman's feet Identical with Manu VIII 270

23 Nearly identical with Manu VIII 271

24 Nearly identical with Manu VIII 272

25 Nearly identical with Manu VIII 279

26 27 Nearly identical with Manu VIII 281 282 In paragraph 7 the Nepalese MS has 'the nose instead of 'the beard

28 Identical with Manu VIII, 283

29 According to the majority of the commentators of Manu

fetches blood (from him), he shall be fined a hundred (Panas) if he cuts the flesh six Nishkas if he breaks a bone he shall be banished

*30 If a man censures a king devoted to the discharge of his duties he shall have his tongue cut out or his entire property confiscated, as an atonement for such crime

*31 When an evil minded man assails a wicked king even he shall be (fastened) on a stake and burnt in fire (for he is) more criminal than one who has committed a hundred times the crime of killing a Brahman

*32 A father is not liable to be punished for an offence committed by his son nor is the owner of a horse dog or monkey (responsible for any damage caused by one of these animals) unless he should have set them to do it

SEVENTEENTH TITLE OF LAW

GAMES

*1 Dishonest gambling with dice small slices of leather little staves of ivory or other (games), and betting on birds form (the subject of) a title of law called (Gambling with Dice and Betting on Animals)

*2 The master of the gaming house shall arrange

this rule has reference to an equal in caste Nearly identical with Manu VIII 284

XVII 1 The translation is according to the Viramitrodaya The subject of bets on animals is treated at great length in the Dhammathats of Burma which are based on the law-codes of India Other games, such as e.g. Katuranga (Shatrang the Indian chess) Birds such as pigeons, also bets on professional wrestlers rams &c Viramitrodaya p 718 Manu IX 223

2 'He shall pay the stakes which have been won i.e. to the

the game and pay the stakes which have been won, the profit of such a conductor of games shall amount to ten per cent

3 When the dice on being thrown fall twice in a game at dice those acquainted with (playing at) dice allo the victory to the adversary and the defeat to the gambler

4 When a dispute has arisen among gamblers let (other) gamblers be appealed to, they shall act both as judges and as witnesses in a dispute of this sort.

5 No gambler shall ever enter into another gaming house before having paid his debt he must not disobey the master of the gaming house and must pay of his own accord what he owes to him

6 Wicked men who play with false dice shall be driven out of the gaming-house after a wreath of dice has been hung round their necks for that is the punishment ordained for them

7 If a man gambles with dice, without authorization from the king he shall not get his stake and shall have to pay a fine

*8 Or let the gamblers pay to the king the share

winning party That portion which has to be paid to the king (see paragraph 8) may also be held to be included in this rule as *Bṛhaspati* says Let the master of the gaming house collect the stakes and pay his due to the winning party and to the king *Apastamba* II 10 25 1-13 *Yâgñavalkya* II 199 200

3 The rendering of the first portion of this paragraph is conjectural It might also be translated as follows When the dice on being thrown fall twice repeated i e when the number is twice as high as at the preceding throw

4 *Yâgñavalkya* II 202

6 *Yagñavalkya* II 202

7 8 *Yâgñavalkya* II 201 203 Paragraphs 7 and 8 are omitted in the Nepalese MS

due to him and play in public thus no wrong will be committed

EIGHTEENTH TITLE OF LAW

MISCELLANEOUS

*1 Under the head of Miscellaneous (Disputes) are comprised lawsuits depending on the king (such as) transgression of the king's commandments and obedience towards his injunctions,

*2 Grants of towns the division of the constituent elements of a state the duties and the reverse of heretics followers of the Veda corporations (of merchants) and assemblages (of kinsmen)

*3 Disputes between father and son neglect of (prescribed) penances abstraction of gifts (made to worthy persons) the wrath of anchorites

*4 Sinful confusion of castes the rules regarding their means of subsistence, and (in short) whatever

XVIII 1-4 The meagre contents of this title of law can hardly be said to be in keeping with the somewhat pompous announcement contained in paragraphs 1-4. On the whole this title of Miscellanies, as defined by Nārada and Brīhaspati may be described as treating of public law or the law of kings (rājadharma) private law being treated in the seventeen other titles of law

1 Obedience towards his injunctions thus according to the *Mitakshara* p. 351. The *Vīramitrodaya* refers the term *tatkarma* *kāramam* to those who from arrogance do such acts as are permitted to a king only such as e.g. placing themselves on the king's throne

2 Grants of towns i.e. to Brahmans and others. Nārada seems to be referring to the so-called *Agraharas*. Regarding the seven constituent parts of a state see *Manu* VII 157 IX 294. Naigama has been translated followers of the Veda because it comes immediately after *pāṣaṇḍī*, heretic. See, too X 1. It usually denotes citizens or traders.

has been omitted in the preceding (titles of law) are treated under the head of Miscellaneous

5 The king shall be careful to protect all order and the constituent elements of his state with the four means indicated by science

6 When any caste should remain (behind the rest) or exceed the limits (assigned to it the king) seeing that it has strayed from its path, shall bring it back to the path (of duty)

7 So also when other wicked acts opposed to the dictates of the sacred law have been committed the king after having reflected (upon the matter) himself shall inflict punishment on those who deserve it

8 What is opposed to revealed and traditional law or injurious to living beings must not be practised by the king, and when it is practised (by others) he must check it.

*9 When an act contrary to justice has been undertaken by a former king from folly he must redress that iniquitous enactment in accordance with the principles of equity

*10 The weapons of soldiers the tools of artizans the ornaments of public women the various musical or other instruments of professional (musicians or other artists &c),

*11 And any implements by which artificers gain

5 The four means of conciliation division bribery and force
Manu VIII 41

6 Yâgñavalkya I 360 The Nepalese MS offers a variation as regards the arrangement of paragraphs 6-11

7 Manu VII 16 VIII 126, Yagnavalkya I 367 Vasishtha XIX 8 Vishnu III 37

10 For the tools of artizans the Nepalese MS in common with the Mitâksharâ has 'the beasts of burden and the like of carriers of goods

their substance must not be laid hold on by the king, even when he confiscates the entire property (of a man or woman)

12 It is not permitted to either advise or rebuke a king or Brahman on account of their dignity and sanctity, unless they should swerve from the path (of duty)

13 That wicked man who does not act up to the laws proclaimed by the king shall be fined and corporally punished, as offending against the king's commandments

14 If the king were remiss in dictating punishments to (members of) any caste when they have left the path (of duty) the created beings of this world would perish

15 Brahmans would leave the sacerdotal caste and Kshatriyas would forsake the Kshatriya caste The stronger would eat up the weaker like fish on a spit

16 The Vaisyas would abandon their work, and the Sudras eclipse all (the rest), if the kings did not visit their subjects with punishment (when they have committed an offence)

17 To show favour to the virtuous at all times and to oppress the wicked, that is declared to be the duty of kings, gain (results to them) from the oppression of their foes

18 As fire is not polluted even though it always burns the creatures of this world even so a king is not polluted by inflicting punishment on those who deserve it

19 Intelligence is the glory of rulers, it becomes

14 15 Manu VII 20

16 Manu VII 21 24

19 For intelligence the Nepalese MS has a royal edict

manifest in their speeches whatever sentence they may pass whether unjust or just settles the law between litigant parties

20 (Law) personified as a king roams on earth visibly, with a thousand eyes Mortals cannot live at all if they transgress his commandments

21 Whatever a king does is right that is a settled rule because the protection of the world is entrusted to him and on account of his majesty and benignity towards living creatures

22 As a husband though feeble must be constantly worshipped by his wives in the same way a ruler though worthless must be (constantly) worshipped by his subjects

23 In order that mortals fearing the orders issued by kings might not swerve from the path of duty, therefore royal orders are declared to arise from lawsuits

24 It is for the establishment of order that various laws (*karitra*) have been proclaimed by kings A royal order is declared to overrule such laws even

25 A ruler has purchased his subjects through (the practice of) austerities therefore the king is their lord For that reason his bidding must be obeyed their livelihood even depends on the king

26 Kings endowed with immense power, appear (variously) in the five different forms of Agni, Indra Soma Yama and the God of Riches

24 *Karitra* seems to mean law or custom in this place Regarding the comparative authority of *karitra* and *rāgasana* a royal order see p 7 note The Nepalese MS. omits 23 24

26 Read *रूपानि* in the text

27 When a ruler is either justly or without (sufficient) reason ardent in wrath and burns (or torments) his subjects he is called Agni (the god of fire)

28 When relying on his regal power the king attacks his foes desirous of victory and upraising a weapon he is termed Indra

29 When free from ardent wrath he appears before his subjects with a cheerful countenance he is denoted Soma (the Moon)

30 When the king having seated himself, full of majesty on the throne of judgment deals out punishment equitable towards all creatures he is called Vaivasvata (or Yama)

31 When a ruler gladdens with gifts petitioners persons commanding respect, wise men servants and others he is called the God of Riches

32 Therefore one must not treat him with contempt and particularly not scold at him and pay obedience to his bidding to disobey him would bring on (instantaneous) death

33 His duties are the protection of his subjects honouring the aged and wise the trial of lawsuits and to make (each caste) abide by the duties as signed to it

34 Let a king be constantly intent on showing honour to the Brahmans A field furnished with Brahmans is the root of the prosperity of the world

35 A Brahman may command respect and a

27 Manu IX 310

28 Manu IX 304

29 Manu IX 309

30 Manu IX 307

33 Manu VII 35 38 VIII 3 &c

34 Manu VII 82 83 Yâgyavalkya I, 314

35 Manu VII 37

distinguished seat at the king's court. The king shall show his face in the morning before the Brahmans first of all and shall salute them all.

36 When nine or seven persons (of different rank) meet they shall first make room for the Brahman to pass by. (Further privileges assigned to the Brahman caste are) free access to the houses of other people for the purpose of begging alms.

37 The right to collect fuel flowers water and the like, without its being regarded as theft and to converse with other men's wives without being restrained (in such intercourse) by others.

38 And the right to cross rivers without paying any fare and to be conveyed (to the other bank) before other people. When engaged in trading and using a ferry boat they shall have to pay no toll.

36 That privilege of the Brahman caste which is referred to in the first part of this paragraph finds its explanation in a well known rule of the Dharmasāstra regarding persons for whom way must be made on meeting them in a road. Thus it is ruled by Gautama (VI 24) that way must be made for a man seated in a carriage for one who is in his tenth (decade) for one requiring consideration for a woman for a Snātaka and for a king but that a king himself must make way for a Srotriya (learned Brahman). This makes in all seven persons for whom way should be made. Manu (II 138) Yāgyavalkya (I 117) Baudhāyana (II 6 30) and Vishnu (LXIII 51) agree in enumerating eight persons of this sort. Vasishtha (XIV 57-60) mentions nine. See too Apastamba II 5 11 5-7.

37 Manu VIII 339 Apastamba I 10 8 3, Gautama XII 28, Yāgyavalkya II 166.

38 Manu VIII 407 Vishnu V 132. The last clause is thus given in the Nepalese MS. They shall have to pay no toll on being carried across a river in a ferry unless (they should cross it) for trading purposes.

39 A Brahman engaged in travelling who is tired and has nothing to eat, commits no wrong by taking himself two canes of sugar or two esculent roots

40 (No gift must be accepted) from one accused of a crime an outcast, an enemy an atheist one in distress without necessity or after inflicting pain on the giver

41 (Gifts shall be accepted) from industrious people on account of their wealth and from generous people because it is proper to accept gifts from such to accept gifts from kings is laudable (they may be accepted) from all people excepting Brahmans

42 Between a Brahman and a king who are both devoted to their duty there is no difference of any sort when they protect mankind (acting) in accordance with the sacred law

43 If a ruler, though severe is mindful of his duty, correct in his conduct and (quick to) punish the wicked, in order to protect (the virtuous) his wealth is declared to be pure

44 When a man accepts a gift from a covetous king who transgresses the precepts of the sacred books he shall have to pass through the well known twenty one hells in succession

45 As pure and impure waters become alike on their junction in the ocean even so (all) property acquired by a king (becomes pure in his hands)

39 Gautama XII 49 50, Manu VIII 341 Or 'five esculent roots according to the Nepalese MS

40 Manu II 185

44 For a list of the twenty one hells see Manu IV, 88-90, Vishnu XLIII 1-22 The Nepalese MS omits this paragraph

45 A different opinion has been enounced above XV 14

46 As gold on being thrown into blazing fire acquires purity even so all gains become pure in the hands of kings

47 When any man gives any property of his to Brahmans the king must give his consent to it this is an eternal law

48 Both the other customary receipts of a king and what is called the sixth of the produce of the soil form the royal revenue the reward (of a king) for the protection of his subjects

49 Whatever has been bestowed on others than Brahmans may be resumed but that which has been given to Brahmans can never be taken back again

50 To give to read and to sacrifice (on his own account) are the three duties of a Brahman To sacrifice for others to teach and thirdly, to collect alms are his (three) means of subsistence

51 Let a Brahman be devoted to his duty and take a livelihood from the king and let him not accept gifts from persons of vile origin if he is anxious to observe the law

52 How should a king be inferior to a deity as it is through his word that an offender may become innocent, and an innocent man an offender in due course ?

53 Those who being acquainted with the divine nature of a king endowed with majestic dignity as he is accept gifts from him do not in the least disgrace themselves (by doing so)

54. In this world there are eight sacred objects

48 Manu VII 130-132 Gautama X 4-2, Vasishtha XIX, 26 27 Âpastamba II 10 26 9 Vishnu III 22-25 Baudhâyana I 10, 18 1

50 Manu I, 88 &c



a Brahman a cow fire gold clarified butter, the sun the waters, and a king as the eighth

55 These one must always look up to worship and honour them personally and turn the right side towards them in order that ones existence may be prolonged

APPENDIX

THEFT¹

1 Two kinds of robbers who steal the goods of others have to be distinguished the one kind open, and the other kind concealed Let a prudent king try to find them out

*2 Open rogues are those who forge measures and weights, receivers of bribes robbers gamblers public prostitutes,

*3 Those who walk in disguise, those who live by teaching the performance of auspicious ceremonies these and such like persons are considered open rogues

*4 Rogues acting in secret are those who roam in the wood, or lie concealed as well as those who make a profession of stealing They attack and rob (those who do not beware of them)

5 Those who infest a country, a village, or a house, or disturb a sacrificial act cut purses and

¹ This section is found in the Nepalese MS only See Introduction The reading of several passages is uncertain and this circumstance taken together with the want of a Commentary renders my translation less reliable than could be desired

Appendix Theft 1-4 Manu IX 256-260 The technical terms have been translated in accordance with the glosses of Manu's commentators as given in the notes to Professor Bühler's translation In par 4 *mushyām* seems to stand for *mushyāṁ*

other persons of this sort have to be considered as concealed rogues also

*6 Blameless persons with whom the stolen goods are not found must not be chastised as robbers by the king but let him quickly punish those robbers as guilty of theft with whom the stolen goods have been found

*7 Those (rogues) who ravage in their own country and those who disturb sacrificial acts he shall strip of their entire wealth and rebuke them severely

*8 Those on whom the stolen goods have not been seized he must examine when they have been arrested from suspicion Their fear having been excited they will give evidence through anxiety in accordance with the facts of the case

*9 Questions shall be proposed to them antithetically with regard to place time region their caste their name their dwelling and their occupation in case they happen to be workmen

*10 When the face changes colour or the voice falters or the features look suspicious, when they do not give evidence in public when they make impossible statements as to place and time when there exists a doubt as to their place of residence

*11 When they indulge in expense for bad purposes, when they have been previously convicted of larceny when they keep bad company or when documents speak against them, (by all such circum

9 'Antithetically (vignrahe) or when they have been arrested
 10 11 A somewhat analogous description of the signs by which
 a false witness may be found out, has been given previously
 I 193-196

stances) they may be discovered (to be thieves) not by the possession of the stolen goods alone

*12 When a ruffian or robber becomes suspected and (the judge) has found out circumstantial evidence (which speaks against him) he shall be caused to make an oath

*13 Those who give food to thieves as well as those who supply them with fire or water or who give shelter or show the way to them or make their defence

*14 Or who buy their goods, or receive (their goods) are held to be equally punishable as they and so are those who conceal them

15 Those who in a principality are the governors of that principality and the neighbours called in (to watch over the safety of life and property) are (reckoned as) equal to thieves, when they stand neutral during the attack (of robbers)

*16 He on whose ground a robbery has been committed must trace the thieves to the best of his power or else he must make good what has been stolen unless the footmarks can be traced from that ground (into another man's ground)

*17 When the footmarks after leaving that ground are lost and cannot be traced any further the neighbours inspectors of the road and governors of that region shall be made responsible for the loss

1 The term *lesa* has been rendered by 'circumstantial evidence' because it seems to be synonymous with *yuktilesa* I 236

13 14 Manu IX 271 278

15 Nearly identical with Manu IX 272

16 The term *goḥara* translated ground may denote the landed property or pasture ground of a whole village See above XIV 22 23

17 See XIV 24

18 When a house has been plundered the king shall cause the thief catchers, the guards and the inhabitants of that kingdom to make good the loss when the thief is not caught

19 Or if he is a wicked man and there exists a doubt as to (whether) the robbery (was actually committed or not) the person (alleged to have been) robbed shall be caused to make an oath regarding the robbery to clear himself (from suspicion)

20 When another person than the thief has been accused of robbery and has been declared thief because he is unable to prove his innocence he shall be paid twice as much (as has been stolen) after the (real) thief has been detected

21 When a man has obtained property stolen by a thief he must restore it in its pristine shape if it be no longer in existence he must make good its value and must be made to pay a fine to the same amount

*22 For stealing wood cane, grass and the like (utensils) made of clay bamboo, utensils made of bamboo, rattan bone leather

*23 Vegetables, green roots grass or flowers, cow milk molasses salt or oil

*24 Cooked food (and other) prepared food spirituous liquor flesh, and every sort of objects of small value—(for stealing any of these) a fine five times the value (of the article stolen should be paid)

*25 (For stealing) any articles sold by weight or measure or tale, the fine shall be eight times their amount in case they are very valuable

19 The senseless reading of the MS *dâpyaka tesham* has been conjecturally altered into *doshakartaisha*

22 24 Manu VIII 326-329

25. Manu VIII, 321

26 Corporal punishment (or death) shall be inflicted on him who steals more than ten Kumbhas of grain where the amount is less he shall be made to pay eleven times as much Thus Manu has declared

*27 (For stealing) more than a hundred (Palas worth) of gold silver or other (precious metals) or the finest clothes or very precious gems corporal punishment (or death shall be inflicted)

28 He who steals a man shall have to pay the highest fine he who steals a woman (shall be stripped) of his entire wealth and he who steals a maiden (shall suffer) corporal punishment

*29 On him who forcibly seizes large domestic animals the highest fine shall be inflicted the middlemost amercement on him who takes cattle of middle size and the smallest fine on him who steals small cattle

30 The first (or lowest) fine to be inflicted on a guilty person shall amount to neither more nor less than twenty four (Panas) The middlemost fine shall consist of not more than four hundred and not less than two hundred (Panas)

31 The highest fine should be known to consist of not more than a thousand and not less than five hundred (Panas) This is the threefold gradation of punishment which has been proposed by the Self-Existent for robberies

26 Manu VIII 320

27 28 Manu VIII, 321, 323

29 Manu VIII 325

30, 31 The reading of these two paragraphs is quite uncertain The rules laid down here apparently differ considerably from the analogous rules of Manu (VIII 158 and other legislators.

³² (When the offence has been committed) for the first time cut purses shall have their (little) finger and thumb cut off (When it has been committed) for the second time, the first fine shall be levied on them

*33 For (stealing) cows belonging to a Brahman, for piercing (the nostrils of) a barren cow and for stealing a female slave (the thief) shall in every case lose half his feet

34 With whatever limb a thief acts among men, that very (limb) shall be taken from him this is a law enacted by Manu

35 Let him inflict a specially heavy punishment on a specially criminal thief or (a lighter one) on one whose offence is less heavy But let him not (punish an habitual thief) in the same way as for the first offence

36 Manu the son of the Self Existent has declared ten places of punishment which should be (selected) in (punishing members of the) three (lower) castes a Brahman should remain uninjured always

37 (Those places are) the privy parts the belly the tongue the two hands, and fifthly the two feet as well as the eye the nose, the two ears, the pro perty, and the body

32 Manu IX, 277

33 The parallel passage of Manu (VIII, 325) shows that *sthû râyâs kledanam* is the correct reading For the three different explanations of this term which have been proposed by the commentators of Manu see the note to Professor Bühler's translation The translation follows the interpretation proposed by Kulluka Govindarâga, and Râghavânanda which appears to be preferable to the others.

34 Nearly identical with Manu VIII 334

36 37 Nearly identical with Manu VIII, 124, 125

38 After carefully considering the (nature of the) offence the place and time and after examining the ability (of the offender) and the motive (by which he was actuated) he shall inflict these punishments

39 Neither for the purpose of gaining a friend (in him), nor for the acquisition of large wealth must a wicked criminal be suffered to go free by the king Thus Manu has declared

40 By pardoning an offender a king commits the same offence as by punishing an innocent man Religious merit accrues to him from punishing (the wicked)

41 Let him not on any account kill a Brahman though convicted of all possible crimes He may at pleasure cause him to be banished thus has the law been settled

42 Let the king take his entire wealth from him or leave him a fourth part of it (only he must not take his life) remembering the law promulgated by the Creator This is just

43 For four offences of a Brahman, branding him is ordained (as punishment) for violating the bed of a Guru for drinking spirituous liquor, for theft, and for hurting another Brahman

* 44 For violating the bed of a Guru (the brand of) a female part should be made, for drinking

38 Manu VIII, 126

39 Manu VIII 347

40 Nearly identical with Manu IX 249

41 Manu VIII 380

42 The third Pada of this paragraph has been conjecturally altered as it cannot be made out in the MS

43 Manu IX 236

44, 45 Manu IX 237 The last Pada in paragraph 44 cannot be made out in the MS

spirituous liquor (the brand of) a liquor sign is ordained for theft he shall make (the brand of) a dog's foot (on his forehead)

45 The slayer of a Brahman shall have (the brand of) a headless man stamped on his forehead and it is forbidden to speak to him This is a law enacted by Manu

46 A thief must approach the king with flying hair running and proclaiming his theft (with the words) 'Thus have I acted Chastise me

47 By so doing he is cleared from guilt because he has confessed his deed the king thereupon, shall touch him (with a club), or dismiss him if he is innocent

48 Those men who have received a punishment from the king for an offence committed by them proceed to heaven free from sin, as (if they were) virtuous men who had acted well

49 Whether he be punished or released the thief is freed from his crime if, however the king does not punish him the crime committed by the thief falls on (the king) himself

50 Self possessed men are corrected by their Guru wicked men are corrected (or punished) by the king but those who have sinned in secret are corrected by Yama, the son of Vivasvat

51 The crime of a Sûdra in theft is eightfold (that of a man of the lowest caste), of a Vaisya sixteenfold and of a Kshatriya thirty twofold

46 Nearly identical with Manu VIII, 314

48 Identical with Manu VIII, 318

49 Nearly identical with Manu VIII, 316

51 Nearly identical with Manu VIII, 337

52 Of a Brahman, sixty fourfold thus the son of the Self Existent has declared Knowledge makes a difference also For knowing persons, (the punishment) is specially severe

*53 Punishment is pronounced to be twofold corporal punishment and fines Corporal punishment is again declared to be of ten sorts fines are (also) of more than one kind

54 Fines begin with a Kākāṁṣī, and the highest amount of a fine is one's entire property Corporal punishment begins with confinement and ends with capital punishment

*55 Fines beginning with a Kākāṁṣī are declared to amount to no less than one Māsha Those are called 'fines amounting to no less than a Māsha which amount to one Kārshāpāṇa at most.

*56 Fines beginning with no less than a Kārshāpāṇa are those amounting to no less than four Kārshāpāṇas, or which begin with two and end with eight (Kārshāpāṇas) or which begin with three and end with twelve (Kārshāpāṇas)

*57 A Kārshāpāṇa is a silver coin in the southern country, in the east, it is an equivalent for (a certain number of) Pāṇas and is equal to twenty Pāṇas

52 *Manu* VIII 338

53 *Manu* VIII, 129 See too above paragraphs 36 37

54 Kākāṁṣī or Kākāṁṣī is the name of a small coin See par 58

53-56 This passage is quoted in the *Smṛitibhāṣya*, with several different readings One of them in par 55 deserves special notice For māshāvaraḥ smataḥ (read smṛitaḥ), the *Smṛitibhāṣya* reads māshāparaḥ smṛitaḥ are declared to amount to no more than one Māsha This is probably the correct reading

57 According to *Manu* (VIII, 136) the Kārshāpāṇa is a copper coin The reading of the second half of this paragraph is quite uncertain

⁴ 58 A Māsha should be known to be the twentieth part of a Kārshāpāna A Kākanṭ is the fourth part of a Māsha or Pala.

59 By that appellation which is in general use in the region of the Punjaub, the value of a Kārshapāna is not circumscribed here

*60 A Kārshāpāna has to be taken as equal to an *Andikā* four of these are a Dhanaka twelve of the latter are a Suvarṇa which is called Dīnāra otherwise

61 Let the king practise the duties of his office and (follow) the rule of inflicting punishment faithful to the tenets (of the sacred law) Let him destroy accordingly as governor the evil doers after having traced them by the application of cunning stratagems and arrested them

59 The term *īha* here may be either referred to the place of residence of the author of the *Nārada smṛiti* or it may mean in this work.

60 An *Andikā* is elsewhere reckoned at four Yavas In the *Vṛamitrodaya* and other works this text is attributed to *Br̥haspati* The coin called Dīnāra is the Roman denarius

QUOTATIONS FROM NÂRADA

I JUDICIAL PROCEDURE

1 2 He is called a (Prâḍvivâka or) chief judge who—fully acquainted with the eighteen titles (of law) and with the eight thousand subdivisions thereof, skilled in logic and other branches of science and thoroughly versed in revealed and traditional lore—investigates the law relative to the case in hand by putting questions (prât) and passing a decision (vivekayati) according to what was heard or understood by him

3 Let not a king actuated by arrogance or avarice promote litigation among persons not engaged in a controversy

4 The king shall examine judicial quarrels between two litigant parties in a proper way acting on principles of equity and discarding both love and hatred

5 (In disputes) among merchants, artizans, or the like persons, and in (disputes concerning) persons subsisting by agriculture or as dyers it is impossible for outsiders to pass a sentence and the passing of

I, 1 2 Smṛtitê ashâdarapadâbhiḡñas tadbhedâsh/asahasravat i
ânvikshikyâdikurataḥ srutismṛtiparayanaḥ || vivâdasamṛitam dhar
mam prîkṣhati prât srutam matam i vivekayati yas tasmât prâḍvivakas
tu sa smṛitaḥ ||

3 Vîram p 48

4 Vy K râgâ dharmasahâyas tu dvayor vivadamânayoḥ sam
yak kâryâny aveksheta râgadveshavivargtaḥ ||

5 Vy K May p 6 (Vyâsa)

the sentence must therefore be entrusted to persons acquainted with such matters (in a cause of this sort)

6 A lawsuit cannot be instituted mutually between a teacher and his pupil or between father and son or man and wife, or master and servant

7 A plaint is declared (inadmissible) likewise by the learned in law when it has been raised by one against many or by women or by menials

8 He shall be admitted as plaintiff whose grievance is the greater or whose affair is the more important of the two and not he who was the first to go to law

9 Half of the (ordinary) punishment is declared for him who either confesses his deed after having committed an illicit act of violence or says of his own accord It is true

10 When (an assessor of the court) has recognised the royal mind to swerve from the path of duty he must not pronounce an opinion which is agreeable to the king (It is only by declaring what is just that) he becomes free from sin

11 Transgression of (the king's) commands killing a female mixture of castes illicit intercourse with another man's wife robbery pregnancy caused by another man than the husband

6 Vy K Viram p 46 (Bṛhaspati)

7 Vy K Viram p 47

8 Viram p 60

9 Smṛitē ayuktam sâhasam brūvâ pratjâpattim vraget tu yaḥ ।
brūyat svayam vâ sad iti tasya kârthadamaḥ smṛtaḥ ॥

10 Viram p 15 He must not pronounce an opinion which is agreeable to the king i e he must not endeavour to please him by what he declares but must deliver an equitable opinion By acting thus he becomes free from sin Viram

11 12 Viram p 50

12 Abuse insulting language, assault, and procuring abortion, are the ten (principal) crimes

13 He who arrests (his adversary) by illegal means, such as by stopping his speech (through gagging the mouth) or by preventing him from breathing and the like practices is liable to punishment, but one who breaks (such arrest) is not (punishable)

14 When a lawsuit has been judged without any previous examination of witnesses (or other evidence) or when it has been decided in an improper manner or when it has been judged by unauthorized persons the trial has to be renewed

15 Whatever property whether movable or immovable has been kept (under the care of the judge after having become the subject of a dispute) must be handed over afterwards to the victorious party together with the interest (accruing on it) and with a document (attesting his victory)

II THE PLAINT

1 The defects of a plaint have been declared as follows (It is defective if it) relates to the property of a stranger if it is without an object, if it does not state any quantity if the mode of acquisition is not referred to in it if too little or too much is written in it and if it is unmeaning

13 May p 2 See above pp 12-19 This text shows very clearly what is meant by the technical term arrest (*asedha*)

14 Vy K *asakshukam tu yad drishyam vimârgena ka tîntam | asammata matâur drishyam punardarsanam arhati ||*

15 *Smṛtiḥ madhye yat sthâpitam dravyam ka am vâ yadi vâ sthîram | pakât tat sodayam dâpyam gayine patrasamnyutam ||*

II, 1-8. *Vîram* pp 65-66

2 That plaint is declared by the wise to relate to the property of a stranger in which joint property is referred to in a claim raised by one man alone who has no right to it or without authorization from the other joint proprietors

3 A plaint is said to be 'without an object' when a man actuated by hatred or anger, taxes another with the murder of a Brahman (or some other deadly sin) and revokes his own charge afterwards on being required to prove it

4 That plaint 'does not state any quantity' in which no figure is given with regard to a certain quantity writing, measure, field, house or other (object)

5 That plaint contains no reference to the mode of acquisition which does not say whether (the property in dispute) has been acquired by learning or gained as profit (or interest) or purchased or obtained by inheritance

6 Too little is said to be written in that plaint in which the year month, fortnight, lunar day and day of the week is not referred to

7 'Too much' may be said to be written in that plaint in which (the plaintiff) after having caused the plaint to be written goes on to mention the witnesses at once, without waiting for the answer (of the defendant) to be delivered

8 That plaint is declared to be 'unmeaning'

2 That plaint is meant in which a stranger or one not authorized by his partners claims the property of a fellowship Vîram

3 That plaint is said to be without an object which is dropped afterwards by the claimant himself Vîram.

7 Witnesses or evidence generally Vîram

8 There is another reading, ubhayam pûrvam, under which the

which is rendered unclear by the mode of writing (exhibited in it) though the claimant's previous statements be (duly) entered in it

9 Let him avoid as a mere semblance of a declaration, (a **plaint** the tenour of) which is unnatural not connected with an injury senseless purposeless incapable of being proved or at variance (with possibility, or with justice)

10 That **suit** which is prohibited by the king or opposed to the interests of the citizens or of the whole kingdom, or of the constituent elements of the state,

11 As well as (those suits) which are opposed to the interests of a town or village or of eminent persons all such suits are declared to be inadmissible

12 A **plaint** in which several different subjects are mixed up together can have no effect

claimant is stated to have proffered both the accusation and the answer **Vīram**

9 Vy *K*, M Macn I 4 10 (uncertain) Unnatural such as e g That person has taken my rabbit's horn and refuses to restore it Not connected with an injury as That man is doing his business in his own house by the light of a lamp which is burning in mine Senseless (a number of syllables strung together) without any intelligible meaning as e g *kaṭaṭapam* or *gaḍadagavam* Purposeless as This man *Dedavatta* is warbling a melodious song before my house Incapable of being proved as *Devadatta* mocks me by a frown Such an assertion as this is incapable of being proved because it does not admit of proof Owing to the transient nature of the act witnesses are not available much less can documentary evidence be resorted to nor would it be proper to perform an ordeal on account of the trifling nature of the charge At variance (with possibility) as, A dumb man has cursed me Or at variance with the interests of a town or kingdom M

10 11 Vy *K* M Macn. I 4 11 and May p 10 (uncertain)

12 V T M Macn I, 4 12 &c. (Each subject shall

13 That plaint is declared to be inadmissible in which the order (of the words) is inverted or the arrangement confused or scattered what belongs together, or which is meaningless or relative to bygone times or unapproved

14 The order (of the words) is said to be inverted in that plaint the meaning of which is rendered unclear by the omission (of certain words) in their proper place and which is not accepted (in consequence)

15 When the original claim is forsaken and replaced by a different proposition the plaint is declared to be meaningless and the previous claim is not carried

16 When a claim is raised in regard to certain property long after the expiration of the proper time the plaint is said to relate to bygone times though evidence be forthcoming

17 That suit in which the claim relates to one thing and the judicial investigation to another is declared to be unapproved because the trial is inconsistent

18 When the plaintiff in his written claim con

be examined in its turn not all subjects at the same time A plaint referring to many distinct articles or to several different accusations is not faulty under this rule M

13-20 *Vīram* pp 67 68

13 14 The order is inverted i e several syllables are inverted in position in the written charge *Vīram Smṛitiḥ*

13 The arrangement is confused when the natural order of the sentence is interrupted and the sense vitiated in consequence *Vīram Smṛitiḥ*

13 Scattered what belongs together i e the several parts of a proposition are not put together *Ibid*

17 Because the trial is inconsistent, because the different parts of the suit do not agree *Smṛitiḥ*

found the charge with the evidence such a claim also cannot take effect because the proper order of propositions is violated in it

19 That plaint should be utterly rejected in which two claims are entered at once one reasonable and the other unreasonable

20 Should a man make mutually conflicting statements in a plaint his claim cannot succeed because of its being vitiated by inconsistent assertions

21 When a man though capable (of proving his claim) omits to prove it for twenty or ten years after the plaint has been lodged by him his declaration becomes futile (in consequence)

22 (The plaintiff) may amend the plaint while the answer has not been delivered When the plaint has been answered the corrections must cease

III THE ANSWER

1 When a plaint of this description has been tendered by the plaintiff the defendant shall deliver an answer corresponding to such plaint

2 That is called a (true) answer by those acquainted with the subject which meets the plaint and is concise, clear consistent and easily intelligible without an explanation

3 If a man's courage fails him when he is about to make a statement in a lawsuit a delay must be

21 *Smṛitē upakṣhā yatra sādhasya vimśatim dṛṣṭvā va samāh* ।
sak enāpi krīte vāde tasya pakṣho mṛśhā bhavet ॥

22 *Vīram* p 20

III 1 *Smṛitē*, Raghunandana pp 12 16 (*Bṛhaspati*)

2 *M Macn* I 5 3 (uncertain) V T &c

3 *Smṛitē* *mair notahate* *yasya vivāde vaktum iṣṭhatah* ।
datavya eva kālāḥ syād arth pratyarthitor api ॥

granted to him (by the judge) whether he be plaintiff or defendant

4 When the defendant contradicts the charge such an answer is termed a denial in a cause

5 When, the plaint having been reduced to writing by the plaintiff, the defendant admits it but adduces some special circumstance, it is called a (retort in the form) *pratyavaskandana* (special plea)

6 That (answer) is no (true) answer which is dubious not to the point, too narrow too extensive or meeting one part only of the plaint

7 An answer which treats of a different subject or which is incomplete or couched in obscure language or confused not intelligible without an explanation or unreasonable, will never enable (the defendant) to gain his cause

4 *Raghunandana*, p 17 *M Macn* I 5 7 &c (*Kātyāyana*)

5 *M Macn* I 5 9

6, 7 V T *M Macn* I 5 11 Dubious as when (the plaintiff) having declared This man has received a hundred *Suvarnas* from me (the defendant replies) Yes I have received a hundred *Suvarnas* or a hundred *Mashas* Not to the point as when a debtor being sued for a hundred *Suvarnas* replies that he has received a hundred *Panis* Too narrow as when (a debtor) being sued for a hundred *Suvarnas* replies that he has received five Too extensive as when (a debtor) being sued for a hundred *Suvarnas* replies that he has received two hundred Meeting one part only of the plaint as when (a debtor) being sued for gold clothes and other objects replies that he has received gold but nothing else Which treats of a different subject as when an action for debt is answered by referring to a different title of law e g when a man being sued for a debt of a hundred *Suvarnas* replies He (the plaintiff) has struck me Incomplete not containing any reference to the particulars of country place and so on, as when the plaint states a certain field situated in the central country (*Madhyadesa*) near Benares towards the east of it, to have been seized by the defendant, and the defendant replies merely I

8 In the case of a denial the burden of proof rests with the plaintiff in the case of a special plea (it rests) with the defendant

9 Let (the plaintiff) make an answer which corresponds to (the contents of) the plaint If he does not (make an answer) the king shall cause him to make one by employing (any of) the (four) methods of conciliation division and the rest till the matter has been cleared up

10 When in the case of a denial (on the part of the defendant) the plaintiff himself admits such (denial) as correct it has to be considered as a confession and one half of the (ordinary) fine shall be inflicted on the plaintiff

11 In the case of a denial the burden of proof rests with the plaintiff, in the case of a special plea

have taken it Couched in obscure terms as when in a suit for a hundred Suvarnas the defendant exclaims Am I the only person indebted to this man? implying by his speech that the chief judge, or assessors or plaintiff is indebted to another man Confused inconsistent as when in an action for a hundred Suvarnas the defendant declares Yes I have received that sum but I do not owe it Not intelligible without an explanation owing to the use of wrong inflections compounds or constructions or to the employment of a foreign language Unreasonable contrary to common sense, as when the plaint runs as follows The defendant has received a hundred Suvarnas from me repayable with interest and has paid the interest only and not the principal and the defendant replies Yes I have paid the interest, but have not received the principal M

8 M Macn I 5 14 (uncertain) May p 11

9 Smṛitiḥ yathārtham uttarām dadyaṁ na kṛet tad oṣāpayen nrī paḥ śāmbhedadibhir margair yāvat so rthaḥ samaddhṛtaḥ || Bribery and force are the two remaining methods.

10 Smṛitiḥ nīhnave tu yadā vadī svayam tat pratipadyate || gñeyā sampratipattis tu tasyardho vinayaḥ smṛitaḥ ||

11 M Macn II 6 5

it rests with the defendant but in a plea of former judgment all that is required in the shape of proof is to produce the previous decree

12 The defendant is at liberty to delay his answer for three days or for five days even

IV WRITINGS AND POSSESSION

1 A writing (or document) should be signed by witnesses the (natural) order of ideas and syllables should not be interrupted local customs and general rules should be observed in it and it should be complete in every respect

2 A document signed by the king with his own hand, or sealed with his own seal is declared to be a royal document and is (considered as equal to) an attested document in all affairs

3 A document suspected (to have a blemish) is valid unless the debtor should have clearly indicated its blemish, and so (is the validity of) a document which is more than twenty years old (established by mere lapse of time)

4 In the beginning gift is a cause (of ownership)

12 Vy K pratyarthî labhate kâlam tryaham pañcâham eva va |
IV, 1 Smṛitûḥ lekhyam tu sâkshmat karyam aviluptakrama
ksharam | desa-karasthitayutam samagram sarvavastushu ||

2 Smṛitûḥ Vîram p 195 (‘Vasish/ha’)

3 Smṛitûḥ Vîram. p 200 (Katyâyana) The validity of a document having been called into doubt, because it either has a blemish or has been vitiated by the lapse of a considerable time it becomes valid through proof by ordeal This is the meaning mere lapse of time being insufficient to produce validity Smṛitûḥ This interpretation can hardly be correct, as ordeals are not referred to in this text

4. M. Macn. III, 6 5. In the case of the first man

)

in the middle possession with a title but continued and hereditary possession by itself is also a good cause (of ownership)

5 There are six modes of acquiring wealth by obtaining (property) what is declared to have been given or earned (acquisition through) valour (in the shape of) a marriage portion and through inheritance from relations or others

6 Having listened to the answer (the plaintiff) at the trial shall produce a document as evidence or he shall prove possession continued for a long time and corroborated by (the statements of) the neighbours or by (other) evidence

7 Supposing a religious student were to perform some vow extending over a period of thirty six years or a man (engaged in trade or traffic) were to reside abroad for a long time in the pursuit of wealth

possession proved by witnesses is superior to, or more decisive than possession excepting hereditary possession. Such hereditary possession again is superior in the case of the fourth in descent to a title proved by documents. In the case of an intermediate claimant (as e.g. the second or third in descent) a title coupled with possession of short duration even is more decisive than a title entirely de titute of possession. M

5 *Smṛitiḥ labdham danakṛ yāproktam sauryam vaivāhikam tathā | bandhavādipragatam śaśvidhas tu dhanāgamaḥ ||* Obtaining by birth paternal or other (inherited) wealth or obtaining property by finding it, as in the case of treasure-trove *Smṛitiḥ*

6 *Smṛitiḥ śrutvottaram kṛyapade lekhyam sādhanam uddiśet | sāmantalakṣhaṇopeta bhuktir va śirakakṛt* The term *sādhanam* a fo tioti denotes witnesses in this place. Therefore the meaning is as follows. In a dispute regarding a house field or other (immoveable property) the claimant must adduce a document or witnesses or he must plead possession. *Smṛitiḥ*

7-10 *Smṛitiḥ brahmaṭāri kareṭ kimāid vra'am śaś rṇsadāb-dikam arthārthi kānyaviśhaye dīrghakālam naraḥ || samā*

8 If then the student after having completed his period of studentship (and returned from his preceptor) were to look after his property possession (by a stranger) continued for fifty years would be capable of depriving him of his property

9 Twelve years for (the study of) each Veda is the period ordained for those engaged in the pursuit of religious knowledge for those engaged in the acquisition of mechanical (or manual) skill the period (of apprenticeship) is declared to last till they have acquired their art.

10 What has been possessed against their wish by their friends or relations, and what has been possessed by persons offending against the king is not lost by the lapse of (a long) time

V WITNESSES

1 (By false evidence concerning land a witness kills everything, beware then of giving false evidence concerning land) In the case of (false evidence concerning) water the consequence is said to be the same as for land and so it is in the case of carnal connexion with a female as well as (in the

*vratto vrati kuryât svadhananveshanam tatah | pañkâsadâbdiko
bhogas taddhanasyapaharakaḥ || pratvedam dvâdarâbdaḥ kalo vi
dyarthinâm smṛitaḥ | silpavidyarthinam kaiva grahanântaḥ pra
kîrtitaḥ || suhrîdbhur bandhubhis kaishâm yat svâd bhuktam avas
yatâm | nrîpâparadhikam kaiva na tat kalena hiyate ||* See Manu
III 1

V, 1-3 Vîram p 171 See Narada I 17 209 (above p 92) the text immediately preceding these texts in the Vîramitrodaya 1 3=Manu VIII 100 101 All these texts, up to 10 form part of the exhortation to be addressed to the witnesses by the judge In 2 I have substituted tathasvavat the reading of the *Todaiâ nanda*, for tathapnyât.

case of false evidence) concerning gems produced in water and everything consisting of stone

2 In the case of honey or clarified butter (the consequence) is the same as (when false evidence has been given) with regard to small cattle. He incurs the same guilt as in the case of a horse (by giving false evidence) regarding a vehicle. The case of silver, clothes, grain, or the Veda is equal to the case of a cow.

3 Having considered all these evil consequences attending a false declaration (a witness) must declare openly everything as (he has) heard or seen (it).

4 Kubera, Aditya, Varuna, Sakra (Indra), the son of Vivasvant (Yama), and the (other) guardian deities of the world are constantly looking on with divine eyes.

5 Let (the judge) ask a Brahman for his testimony by saying 'Speak', a Kshatriya by saying 'Speak the truth', a Vaisya by referring to his kine, grain, and gold, but a Sudra (by conjuring him) by all possible wicked deeds.

6 Whatever places (of torment) are assigned (in a future state) to the murderers of Brahmans or to the slayers of women and children, and to him who betrays a friend or shows ingratitude, those very places shall be thy home (after death) if thou speakest falsely.

7 All meritorious deeds which thou, O good man, hast done since thy birth would go to the dogs if thou shouldst speak falsely.

4 *Smṛitiḥ. kuberādityavarunasaṅkṛavarivasvatadayaḥ* : *paryarti lokapālāḥ kaṁ nityam divyena lakṣhushā* ॥

5-9 *Vyāk.* Identical with Manu VIII 88-92

8 Although, O virtuous man, thou thinkest of thyself, 'I am alone, yet that says who sees the evil and the good ever resides in thy heart

9 If thou art not at variance with the god Yama the son of Vivasvant who resides in thy heart, thou needest not go to the Ganges or to (the country of) the Kurus

10 Perjured witnesses, as well as those who rob others of their property and wicked kings shall have to reside (hereafter) in a very dreadful hell for the time of a kalpa

11 When (a calamity such as) an illness or fire or the death of a relative happens to a witness within seven days after his evidence has been taken, he shall be made to pay the debt and a fine

12 Learned Brahmans and other such persons (are incompetent witnesses) under a text of law thieves and the like persons on account of their notorious perversity (the deposition of the witnesses is worthless) owing to mutual contradiction when the witnesses make mutually conflicting statements at the trial of a cause

13 'One who gives evidence of his own accord is a witness who comes to make a deposition of his own accord without being appointed (a witness) Such a man is termed a spy in the law books, and he is not worthy to become a witness

10. *Smṛitē atīvanarake kalpam vaseyuh kṛtasākshinaḥ | para vittaharā ye ēa rāgānas kṛpyadhārmikāḥ ||* A kalpa is a fabulous period of time the duration of which is reckoned in various ways

11. *Tod.* Identical with Manu VIII 108

12-14. *Vīram* p 151 12 13a and 14 occur in the Minor Nârada as well (p 34) where they come immediately after a text which is identical with Nârada I 12 157 (above p 82)

14 'One rendered incompetent by intervening decease is a witness (who comes) after the death of the claimant unless he should have been instructed (by the claimant) on his deathbed

VI ORDEALS

1 Let (the defendant) touch the heads of his sons wife or friends or else the (ordeal by) sacred libation (may be performed) whatever the nature of the charge may be

2 It is on the claimant that the duty of declaring his readiness to take on himself the penalty (to be awarded to the losing party) devolves in every case Or the ordeal may be performed by either party at pleasure, the other party consenting to give the penalty (to be awarded in case of defeat)

3 To persons suspected by the king or denounced (as criminals) by (intercourse with) robbers or intent on their own justification an ordeal must be administered without binding (an opponent) to give the penalty

4 (The performance of) an ordeal is ordained in

VI 1 Vīram p 226, M Macn X 1 5 (uncertain)

2 Vīram p 228

3 V T M Macn X 1 5 a (uncertain) The Mitāksharā explains the term *siraś* or *śirsha* which has been translated by penalty in this paragraph and in the preceding text as denoting the head i e the fourth or principal division of a lawsuit which involves defeat or success and results in the awarding of a punishment or fine to the losing party It appears more probable however that *siraś*, 'head' is an equivalent for life the accuser having to declare his readiness to risk his life i e a heavy punishment, in case of defeat.

4 *Smṛitū. kārane mahati proktam divyam vādārthinām nrīnam | nrovartī yadā na syāt tadā divyam na dīyate |* This is apparently the

important cases when people are engaged in a controversy an ordeal must not be administered when there is no one ready to take the punishment on himself

5 Justice is based on truth and litigation (depends) on witnesses When a case admits of divine test human evidence (the testimony of witnesses) or documents must not be resorted to

6 The (ordeal by) sacred libation has been declared by the wise to be applicable to all (castes) and poison (to all castes) excepting the Brahman (caste) (Either the balance is reserved for Brahman) or the balance may be administered to (members of) every caste

7 The (ordeal by) sacred libation may be administered in every case The (ordeal by) balance is admissible in every season

8 Eunuchs distressed or feeble persons the severely afflicted infants old men women and the blind should be tested by the balance always

9 (The ordeal by) poison is not destined for

correct reading of the text translated above, Narada I 19, 257 (pp 101 102)

5 M Macn X 1 7 In actions for debt and the like though witnesses possessing the required qualifications (such as veracity &c) should have been adduced by the plaintiff an ordeal may be administered, if the defendant proposes an ordeal and promises to give the fine or other penalty to be inflicted in case of his being defeated because witnesses are subject to the fault of partiality whereas an ordeal shows the true state of the case as no fault can be found with it, and is an emblem of justice M

6 Vîram p 235 This text comes after Nârada I 24, 335 (above p 117)

7 May p 18 (text)

8 9 Vîram p 235 In the third Pada of 8, I read bâlavrîd dhâstriyo ndhâmska with Smṛtiê for bâlavrîddhâturân strîs ka

women nor is (the ordeal by) water fit to be administered to them it is through (the ordeals by) balance sacred libation and others that (the judge) must explore the true state of their minds

10 Let (the judge) test strong men by fire, water or poison and let him test infants old or distressed men by the balance

11 Let (the judge) avoid (the ordeal by) fire in the case of lepers (the ordeal by) water in the case of the asthmatic and (the ordeal by) poison in the case of bilious or phlegmatic persons

12 In the season of the rains let the (ordeal by) fire be administered also in the cold and chilly seasons In the summer season the (ordeal by) water is the proper (kind of ordeal) Poison (is destined) for the cold weather

13 The chilly cold and rainy seasons are declared to be (the proper seasons) for the (ordeal by) fire the autumn and summer seasons for the (ordeal by) water the (ordeal by) poison (is fit) for the cold and chilly seasons

14 The months of *Kāitra* (March–April) *Mārgaśīrsha* (November–December) and *Vaisakha* (April–

(*Vīram Tod*) as the term *ātura* occurs twice under the latter reading

9 M Macn X 1 12 (uncertain), Nepalese *Nārada*

10 11 Minor *Nārada* I 5 116 118 (p 46) For the Sanskrit see *Nārada smṛiti* p 112 note Nearly identical with a text usually attributed to *Prāmāha Vīram* p 237

12 *Vīram* pp 239 240 Nearly identical with *Nārada* I 19 254 (p 101) and Minor *Nārada* I, 5 113 114 (p 46)

13 14 a V T M Macn X 1 10 (uncertain) These two texts are elsewhere attributed to *Prāmāha*, and it is certainly difficult to reconcile them with 12

14 b *Vīram* p 240 In the quotations this text comes after

May) are proper months for all (ordeals) and not adverse to any kind of ordeal (Ordeals must) never (be administered) in the afternoon nor in the twilight nor at noon

15 Ordeals administered at an improper place or at an unsuitable time or performed at a distance from human habitations constitute a deviation from the proper course of a lawsuit this is certain

16 The chief judge must superintend the whole of the proceedings at an ordeal fasting and obeying the king's instructions in the same way as an Adhvaryu (priest officiates) at a sacrifice

17 The chief judge who must be a Brahman thoroughly versed in the Vedas and Vedāṅgas instructed in sacred learning and of religious conduct tranquil minded unambitious

18 Fond of veracity pure able delighting in the welfare of all sentient beings having kept a fast clad in his moist garments (after a bath) having cleansed his teeth should worship all deities according to rule

19 With red perfumes and garlands as well as

Nārada I 19 259 (above p 102) The prohibition to administer an ordeal at noon has reference to ordeals other than the ordeal by water V ram

15 Vīram p 241 May p 18 (text) I read bahirvāsakṛtāni in the second Pāda (bahirvādikṛtāni May) and vyabhikāram sadartheshu in the third Pada (vyabhikāre sadartheshu Vīram.) At a distance from human habitations in solitude Vīram

16 M Macn. X 1 8 a Pitāmaha, elsewhere

17 18 Vīram p 245 M Macn X 2 18 ('Pitāmaha) I read kuryād in 18 as in Mṛākṣharā, Vivādatānḍava, &c (kṛtvā Vīram) These texts although generally quoted in the section on the ordeal by balance seem to contain a rule applicable to every ordeal

19 M Macn X, 2 17 &c This text is supposed to apply to

with curds cakes of flour fried grain and other (offerings) he should first worship the balance and then show honour to the others

20 The balance and the other ordeals ordained by the sages should be administered by the king by consent of the claimant but not otherwise

21 When they are performed otherwise (the claimant not giving his consent) he incurs the same guilt as a thief

22 I will state next the excellent rule regarding the (ordeal by) balance as the king and the chief judge should administer that ordeal to a man (arraigned in a cause)

23 The two posts supporting the beam of the balance should measure four Hastas above ground their (entire) length should be six Hastas

24 The king should cause a wooden beam of the balance to be made which must be four Hastas long

a judge who is about to administer the ordeal by balance to one arraigned in a cause The term the other s is said to relate to Indra and the other deities

20 21 Minor Nârada I, 5, 112 113 (pp 45 46) The second half occurs in the Nepalese Nârada as well where the chapter on the ordeal by balance commences with it For the Sanskrit see Nârada *smṛiti* loc cit.

22 Minor Nârada I 5 119 (p 46) *atañ param pravakshyami dhañasya vidhum uttamam i rāgāñ ka prâdvivakarñ ka yatha tam kârayen naram ||*

23 Nepalese Nârada *ñaturhastau tulâpâdâv ukñhrayena prakiritau i shaddhastam tu tayor bhavet pramânam parimanatañ ||* The Minor Nârada has the following text instead of this *dhañasya padav (padad) ñrddhvam tu ñaturhastau prakiritau i paññahastâñ tula karya dvihasta kârgala smṛita ||* Under this reading the beam of the balance would have to be five Hastas long whereas the following text (24) states its length at four Hastas.

24-26 Minor Nârada I 5 121 122 (p 47 and Addenda pp xxxii,) *kârayeta ñaturhastam samâñ lakṣanalakṣitâñ*

polished furnished with the required characteristics and having the two scales suspended by both extremities

25 After having caused two posts to be erected on even ground which must be placed from north to south and must be arranged both in one line he shall cause the beam of the balance to be fastened across (the transverse beam which connects) them

26 With an iron cord let a virtuous man surround the beam in the middle and fasten it in an east-western direction after having carefully connected it (with the transverse beam)

27 The (appointed) examiners have to take care always that the two perpendiculars of the balance should be equal in length Water must be poured out on (the beam of) the balance by skilled persons

28 If the water does not trickle down (from the balance) the balance may be considered as being level

29 With red perfumes and garlands as well as with curds, cakes of flour, fried grain and other (offerings, the judge) should first worship the balance and then show honour to the others

tulām kâshīhamayīm rāgā śikyaprantāvalambinīm || dakṣiṇottara samsthanāv ubhāv ekatrasamyatau | stambhau kṛtvā same dese tayor/ samsthapayet tulām || āyasena tu pasena madhye samgrīhya dharmavit | yogayet tam susamyuktam tulām pragaparāyatām ||

27 28 May p 20 (text) M Macn X 2 6 (uncertain) These two texts are elsewhere attributed to Pitāmaha and this is probably the correct view as the fastening of the two perpendiculars by the two arches in which the balance moves up and down is described in another text of Pitāmaha.

29 M Macn. X, 2 17 The injunction contained in this text concerns a judge who is about to administer the ordeal by balance to one arraigned in a cause The others i.e. Indra and the other deities. Vīram p. 251 See 19

30 (The person accused being about to be placed in the scale for the second time the judge should address the balance as follows) Thou O Balance hast been created by Brahman to test the wicked On account of the syllable dha thou art the image of Dharma (Justice) on account of the syllable ta thou

31 Being used for balancing (dhṛta in this ordeal) discoverest the vicious Therefore thou art called dhata (balance)

32 If (the person) remains level (sama) he is considered to be in a middling position (samata) If he comes down he loses his cause He who goes down is not innocent he is innocent who goes up

33 He who remains level is also not acquitted These are the three possible cases in the (ordeal by) balance Thus has been declared the never-failing acquittal (obtainable) through the test by balance

34 When (the scales fixed) at the two extremities of the beam have been moved, when the mark which had been made has come off when (the balance) is going up and down being agitated by wind,

35 Or when (the man appointed to hold it) lets it

30 31 Vīram p 251 M Macn X, 2 23 (uncertain)

32 33 Nepalese Narada samena samatām eti hīyamanas tu hīyate | adhogatir na sudhyeta sudhyetordhvagatis tathā || samo pī na (hi MS) visuddhaḥ syad ity eshā trividha tula | eshoditā tulākalpe (tulākalpaḥ MS) suddhir avyabhikarṇa || 32b 33a are attributed to Vyasa in the Vivādatāṇḍava The reading na fo m has been taken from the same compilation It appears from Narada I 20 283 (above pp 107 108) that an equal result of the first and second weighing was not considered as a proof of innocence According to others, such a result proves the person balanced to be guilty in some degree or the proceeding has to be repeated

34 35. Vīram p 254 Smṛ nā V T I read with Smṛitā

go all of a sudden (in all these cases) the matter in dispute must not be decided either way

36 Now then I will proclaim the excellent rule regarding the (ordeal by) fire, as it has been declared (by the sages) The intermediate space between two circles is ordained to measure thirty two Angulas

37 The seven circles are thus declared by persons thoroughly conversant with the art of computation to cover a space of two hundred and twenty four Angulas

38 Let the peculiar signs be marked which he has on both hands both visible and invisible ones whether caused by a scar or not caused by a scar

39 After having first marked in this way the hands of the person accused he should offer clarified butter in fire according to rule as a propitiatory rite reciting Mantras (at the same time)

tulasirobhyām udbhrantam vikālam nyastalakṣhaṇam । yadī vāyu prānunno vā dhavaty urdhvam adho pi va ॥ nirmuktaḥ sahasā vapī tada na katarām vrageṭ ॥ The mark 1 e 'the water or whatever else has been used to mark the even position of the scales (*Smṛitīk* *Vīram*) or the bill recounting the charge which has been fixed on the head of the person balanced (*V T*)

36 *Vīram* p 256

37 Nepalese *Nārada* Minor *Nārada* I 6, 3 (p 49) I read *saptabhir mandalair evam angulanām satadvayam । śakaturvimsati proktam saṁkhyā'attvārthadarsibhiḥ ॥* The quotations agree with *Nārada* I 21, 286 in referring to eight instead of seven circles.

38 *Vīram* p 259 The marking of the hands serves the purpose of marking the difference between the previously extant sores and those eventually caused by the hot iron ball

39-45 *Smṛitīk* *br̥h̥tvanam abhīrastasya prathamam hastalakṣhaṇam । santyartham guhujān mantrair ghr̥itam agnau yatha vidhi ॥ tarpiteshv aha deveshu lokapāleshu kaiva hi । ādityābhī-mukho bhūtvā imam mantram udīrayet ॥ tvam agne sarvadevānām antas karasi pāvakaḥ । havyam vahasī devānām antaḥśāntim praya-
kṣhasī ॥ prakṣhanāni manushyānam pāpāni sukṛitāni ka । tvam eva*

40 The gods and the guardian deities of the world having been hospitably entertained, let (the person accused) utter the following prayer facing the sun

41 Thou O fire dwellest in the interior of all deities as a flame Thou conveyest burnt-oblations to the gods and givest peace of mind

42 Thou O God knowest the secret offences and merits of men Thou O deity knowest what ever mortals do not comprehend

43 'Arraigned in a cause I am about to be tested by fire Therefore deign to deliver me lawfully from the perplexity in which I am involved

44 The man (about to be examined) having made this speech facing the east with firmness his joined hands should be covered with seven equal leaves of the holy fig tree

45 And both hands should be tied with seven strings of light coloured thread

46 (Then the man) should take a smooth ball of red hot iron fifty Palas in weight in both hands and step gradually across the seven circles

47 When a man has carefully stepped through

deva gāṁśhe na vidur yāni manushāḥ || vyavahārābhisasto yam
vahnau tishṭham samsaye | tasman mam samsayārudham dharmatas
tratum arhasi || evam uktavatas tasya pranmukhasya tu dhimataḥ |
pattrair aṅgalim apurya asvatthair saptabhiḥ samam || veshṭayita
sitair hastau saptabhiḥ sūtratantuohiḥ || For similar prayers which
are put in the mouth of the judge however see Nārada I 21 290-
294 (above pp 109 110) Minor Nārada I 6 10 11 (p 41)

45 M Macn X 3 2

46 Minor Nārada I 6 6 7 (p 49) hutāsataptalohasya
pañjāsaptalukam samam | hastābhyām pindam adaya mandalāni
sanair vraget ||

47 Nepalese Nārada. tirtvānena vidhānena

samābhitaḥ |

the (seven) circles in this way without having burnt himself in the least he is acquitted

48 When he has dropped the ball his hands should be inspected. If the marks have retained their previous appearance he should examine (the hands) elsewhere as well.

49 When a bloodshot round stain or any other sore caused by fire is seen, the man has to be considered as guilty because truth and virtue are not found in him

50 I will proclaim next the excellent rule regarding the (ordeal by) water. Let a king who is desirous of establishing perfect truth refrain from administering (this ordeal) in winter

51 With perfumes garlands sweet smelling substances honey milk clarified butter and the like let (the judge) perform the worship of Varuṇa (the deity of water) first of all

52 Let (the judge) cause this ordeal to be per

adagdhaḥ sarvatha vas tu sa viśuddho bhaven naraḥ || Nearly identical with Minor Nārada I 6 7a 8b

48 49 *Tōd Smṛitī* Vīram p 264 (Kālikāpurāṇa) 48b according to the Nepalese Nārada tasyaiva muktapindasya kuryat karanīkṣanam | pūrvarūpesu śhneṣu tato nyatrapī lakṣhayet || mandalam rakta amkāsam yaś śhanyad vagnisambhavam | so viśuddhas tu viśṇeyo satvadharmavyavasthitaḥ || If a boil or other (tumour) caused by fire should be discovered on the palms of his hands, he has to be considered as guilty. If nothing of the kind is discovered he is innocent. *Smṛitī* Vīram

50-79 The ordeals by water and poison are omitted in the *Smṛitī* *andrikā* because they are obsolete now-a-days

50 Nepalese Nārada ataś param pravakṣyāmi toyasya vidhīm uttamām | hemante varṣāyāṃ rāga ya śhāśhke śhuddhir uttamām ||

51 M Macn X 4 3 (uncertain) Vīram p 69

52 Minor Nārada I 7 2 (p 50) śvaśhke gale suśhītale galau kaśhpankavargite | vipule natigādhe ka kuryād divyasya nirṇayam ||

formed in transparent and very cool water which does not contain aquatic animals or mud and is abundant and not too shallow

53 Let (a man) go near the bank of the water (in which the accused is to be immersed) and erect an arch as high as the ear (of the person) on the edge (of that water) on level and purified ground

54 A strong bow should be known to have seven hundred one not particularly strong six hundred a weak bow, five hundred Thus has the rule regarding the bow been declared

55 From a bow of a middling quality let a skilful (archer) discharge three arrows after having made a target one hundred and fifty Hastas distant.

56 (The archer) is blameable if the arrows discharged by him fall short of or go beyond the target (The person accused) obtains acquittal if his body continues immersed in water after the middling arrow has been (discharged and) brought back

53 M Macn X, 4 13

54 Nepalese Nārada *krūrām dhanuḥ sapṭaratam nānkrūrām tu śaṣṭaratam | mandam pañṣaratham gñeyam esha prokto dhanurvidhau ||* Nearly identical with Minor Nārada I 7 4 (p 50) Nārada I 22 307 (above p 112) Viram p 268 &c The translation of this text is based on the interpretation given in *Tod* That bow which bends sufficiently to admit of discharging an arrow from it, when a weight of seven hundred Palas is fastened by the string is said to have seven hundred The terms 'six hundred and five hundred' have to be understood in the same way See too above p 112 307 note

55 56a M Macn X, 4 15 The rule regarding the distance of the target which renders the arrows entirely superfluous seems to belong to a more recent period than the other rules See Prof Stenzler's Essay on Indian Ordeals

56b. *Tod* *ānīte madhyame vāne magnangaḥ sukṛtam yāt |*

57 Among fifty runners those two who are the quickest runners should be appointed to fetch the arrow

58 Let a strong man who may be a Brahman Kshatriya or Vaisya, and must be free from affection and hatred be placed in water reaching his navel (standing erect) like a pillar

59 (The accused) thoroughly controlled in mind shall seize the thighs of that man under water and stand in it composed all the time till the (runner) appointed to fetch (the arrow) has returned

60 Then let men strictly devoted to veracity and virtue acquainted with the application of legal rules and free from affection and hatred see that every thing is fair

61 An intelligent, pious minded man should descend into the water and duly address (the deity of water) with the following auspicious texts

61 b The sacred prayer (runs as follows) Om adoration to Justice

62 Thou O lord of waters who art so pleasantly

57 M. Macn. X 4, 12

58 Viram p 269

59 Nepalese Nārada. toyam adho manushyasya gr̥h̥itvorū susamyataḥ | tāvat tishṭheta nyato yāvat prāptaḥ samapakī ||

60 Minor Nārada I 7 8 (p 51) dharmasthānam tataḥ kuryuḥ satyadharmaparāyanāḥ | dharmasāstravidhānagñā ragadveshavarīṇaḥ ||

61 Nepalese Nārada. avatīrya gale vidvān snātaḥ prayutamā nasaḥ | śrāvayeta yathānyāyam ebhur mantrapadaḥ subhāḥ || The correctness of this reading seems doubtful According to the other authorities the prayer is to be recited by the judge or by the accused

61 b Nepalese Nārada dharmamantraḥ | om namo dharmāya |

62 Nepalese Nārada. yonis tvam asi (yatas tvam asti MS) bhūtanam galeśa sukharīṇaḥ | trāyasvānam naram pīpat paryasi tvam subhārīṇam ||

cool art the source of (all) beings Save this man from guilt thou knowest both good and evil

63 Thou art the first of the gods and the great comforter of the world Thou O water dwellest in the interior of all beings like a witness

64 Thou O deity alone knowest what mortals do not understand This man being arraigned in a cause is going to dive in thee Therefore deign to deliver him lawfully from this perplexity

65 Then (the accused) should submerge all his limbs in water so as to become invisible

66 A prudent man should leave the water after having seen the arrow brought back, and should approach the king and all the assessors of the court, after saluting them reverentially

67 Though only his ear eye mouth or nose should become visible while he is in water he cannot be acquitted If he remains invisible he obtains acquittal

63a occurs in the Minor Nārada and Nepalese Nārada (Minor Nārada I 7 15 a) *adidevo si devanam (bhūtānām Nep Nār) lokasyāpyayanam mahatī* After this the Nepalese Nārada has two texts which are identical with Nārada I 22 316 317

63b Minor Nārada I 7 16 a *tvam ambhaḥ sarvabhūtānām antar kṛasī sākshivat* Identical with Viṣṇu XII 7a.

64 a, b Minor Nārada I 7 16b 17a. *tvam eva deva ganiṣhe na vidur yāni manavaḥ i vyavahārābhīrasto yaṁ mānushas tvayī maggaḥ* || Nearly identical with Viṣṇu XII 7b 8a

64c Minor Nārada I 7 17b *īd enam samsayād asmad dhar matas tratum arhasī* Identical with Viṣṇu XII 8b

65 Nepalese Nārada *tato nimagget salile sarvāny angāny adarsanat* ||

66 Nepalese Nārada. *prāptam tu sayakam drīṣṭvā galād uttīrva buddhimān i prampatyā nrīpam gakkhet sarvāms kaiva sabhasadaḥ* ||

67 Minor Nārada I 7 12 *karmakṣumukhanāsānām yasva toyē vyavasthitarī i drīṣyate na viśuddhaḥ syād adrīṣyaḥ suddhim āpnuyāt*

68 Now then I will proclaim the excellent rule regarding the (ordeal by) poison (stating) how the king should give poison the best means of purification for a man

69 Let him give the poison in the presence of (images of) the deities and Brahmans after having kept a fast and worshipped Mahesvara with incense offerings and sacred texts

70 (The judge) should give the poison with fixed attention facing the north or the east in the presence of Brahmans (while the accused) is facing the south

71 Let seven Yavas be given as a test of innocence without doubt of poison from the *Srzinga* tree or *Vatsanâbha* (poison) or *Himaga* poison

72 In the morning and in a cool place let the poison be given to all persons, after it has been finely ground, and mixed with clarified butter thirty times the quantity

73 He must not give poison to infants disabled or superannuated persons or to those who have committed a very light offence only or to a mad man, to one severely afflicted to a cripple or to ascetics

74 If the person (examined) undergoes no change

68 Minor Narada I 8 1 (p 52) *atah param pravakshyâmi vishasya vidhum uttamam ; yathâ dadyâd visham ragâ sodhanam paramam nrnam ||*

69 M Macn. X, 5 4

70 M Macn X 5, 6

71 *Tod* *Vîram* p 273 (*Pitamaha*) *Himaga* poison is no doubt the poison elsewhere called *Haimavata* coming from the Himalayas.

72 *Vîram* p 275 M. Macn X 5 13 (' *Kâtâyâna*)

73 Nepalese Narada na *bâlâturavṛddheshu naiva svalpâparâ dhishu ; nonmattârte tatha vyange na ka dadyât tapasvishu ||*

74 M Macn. X 5, 16

of appearance during the time occupied by clapping the hands five hundred times, he is acquitted and should be cured (by giving him antidotes of poison)

75 On account of thy poisonous and dangerous nature thou art hard on all persons Thou art appointed to show the difference between good and evil like a witness

76 Thou, O deity knowest the sacred ordinances and the conduct of men both good and evil actions, (in short) whatever men do not comprehend

77 This man being arraigned in a cause, wishes to obtain acquittal Therefore deign to deliver him lawfully from this perplexity'

78 This prayer should be pronounced according to rule while the poison is being swallowed (by the person)

79 The king having known the man to be innocent should honourably dismiss him and proclaim him (innocent) with a loud voice Thus has the law been laid down

80 (Let the ordeal by sacred libation be administered) to one who consents to it and puts faith (in

75 Minor Nārada I 8 7 *vishatvad v shamatvak ka kruram tvam sarvadehinam i subhāsubhāvivekartham nyukto hyasi sālshivat ||* The first half is identical with Vishnu XIII 6a

76 Minor Nārada I 8 8 *dharmaṇi karitam pumsām asubhāni subhāni ka i tvam eva deva ganishe na vidur yaṇi manavaḥ ||*

76 b is identical with Vishnu XIII 6 b

77 Identical with Vishnu XIII 7

78 Nepalese Nārada *iti mantram pathet tatra vidhinā vishabha kshane (vibhakshane MS)*

79 *Tod tam viruddham iti gñatvā rāgā satkṛitya mokayet i ukṣaṇi prakarayet kāmam esha dharmo vyavasṛitaḥ ||*

80 Vîram p 278 where this text is preceded by two texts identical with Nārada I, 24 327 328 (above p 116)

religion) in the presence of the deities and Brahmanas

81 Having called near the person accused (the judge) should place him inside the circle and cause him to swallow three handful of water after having caused him to face the sun

82 After having worshipped that deity (to which the accused is devoted the judge) should wash (the image of that deity) with water, proclaim his crime, and cause him to swallow the three handful of water

83 When some one drinks consecrated water of his own accord, after having been charged with a crime, and does not confess his guilt actuated by avarice, such a wicked man will become a leper (in a future birth)

84 When a man tells a lie knowingly and intentionally, after having drunk consecrated water he is born as a poor, sick or foolish person in seven (successive) existences

85 When a man administers the (ordeal by) sacred libation by force to procure some advantage to himself it will destroy himself, nor will his affairs prosper

86 When a man has been convicted (by this

81 M Macn X, 6 8 (uncertain) V T The circle has to be made with cowdung M

82 Viram p 279

83 Viram. p 279 Smṛiti I read with the latter work *vañ kṣāñd dūshito narañ*, after having been charged with a crime instead of *na kṣāñd dūshito narañ* without having been charged with a crime (Viram)

84 85 Ibid

86 Minor Nārada I 9,5 *vibhāvitam sadāpyañ syād dhaninā tu svayam dhanam | rāññāñ ka dvigunam dandam rāññāñ dāpayet* 7

ordeal) he may be compelled by his creditor himself to repay the debt proved against him and the king may exact from him with justice a fine amounting to twice as much as the debt

VII MISCELLANEOUS LAWS

1 (Because fathers desire offspring, to be released from debt by their sons), therefore should a son be gotten (by his father) give up his own property and assiduously redeem his father from debt lest he should go to hell

2 The interest is unlimited on thread cotton substances from which spirits may be extracted, tin lead, weapons of all sorts skins copper iron

3 And all other articles of this kind as well as bricks This has been declared by Manu Pragapati

4 On oil of every sort on intoxicating drinks on honey on butter on sugar and on salt the interest shall cease when it reaches eight times the original amount

5 The debts of sick mad overaged or long absent persons such debts should be discharged by their sons even while such persons are alive

6 A wife a daughter in law a grandson's wife and the presents bestowed on a wife (which constitute her separate property) if a man takes any of these he shall be made to pay the debts (of such

VII 1 Viram p 340, Minor Nārada I, 3 5 See Nārada smṛiti p 47 note

2-4 Minor Nārada I, 4 34 35 See Nārada smṛiti p 77 note

5 Minor Nārada I 3, 15 See Nārada smṛiti p 50 note

6 7 Minor Nārada I 3, 22 23 See Nārada smṛiti pp 53 54, note.

women) and so shall he who lives on the landed property (of a stranger)

7 It is on the wife that the performance of religious acts depends in all (four) castes one after the other He who takes the wife of a man takes his property (and debts) as well

8 Females are not entitled to bestow gifts or to sell property It is only while she is living together (with her family) that a woman may enjoy (the family property)

9 It is by permission (of the owner) only that a female slave cattle, or an estate may be enjoyed (by a stranger) He who enjoys that which had not been given up to him (by the owner) must pay for the (illegitimate) enjoyment of what he had been enjoying

10 When a man forcibly enjoys property such as a house field, cow or the like without authorization (from the owner) he deserves the same punishment as a thief

11 He who uses a bull or a milch cow or a boat or a female slave, without authorization (from the owner), shall pay four Panas (as a fine)

8 Minor Narada I 3 28 See Narada *smṛiti* p 56, note

9-15 *Smṛitē uddiṣṭam eva bhoktavyam strī pasur vasudhâpi va | anarpitam tu yo bhunkte bhuktabhogam pradâpayet || anuddiṣṭam u yad dravyam vasakshetragavâdikam | svabalenarva bhuñjânaś koravañ dandam arhati || anadvâham tathâ dhenum navam dâśim tatharva ka | anuddiṣṭam tu bhuñjâno dadyât panakatu śhâyam || dâśi naulâ tathâ dhuryo bandhakam nopabhugyate | upa bhoktâ tu tad dravyam panair eva virodhayet || divase dvîpanam dâśim dhenum ashâpanam tathâ | trayodasam anadvâham arvam bhuñjânaś ka shodasa || naukâm arvam ka dhenum ka lāngalam kârm kasya ka | balatkârena yo bhunkte dâpyas kâśhṭagunam dine || ulûkhale panardham tu musalasya panadvayam | sūrpasya ka panardham tu gamnir munir abravî ||*

12 A female slave a boat, a beast of burden and a pledge is not lost (to the owner) by adverse possession. The possessor is bound to give a compensation in money for his enjoyment of them.

13 (Let him give) two *Panas* a day for the use of a female slave eight *Panas* for the use of a milch cow, thirteen for the use of a bull sixteen for the use of a horse or of an estate.

14 He who forcibly enjoys a boat, a horse a milch cow or the plough of an agriculturist shall be made to pay eight times (their value) each day.

15 (For the use) of a mortar, half a *Pana* for the use of a pestle two *Panas* for the use of a winnowing basket half a *Pana*. Thus has the sage *Gaimini* declared.

16 A deposit which has been entrusted to a friend is called a deposit based on confidence.

17 Should a man, after entering the order of religious ascetics violate the duties of his order the king should cause him to be branded with a dog's foot and banish him quickly (from his realm).

18 These two persons are (as contemptible as) *Kandalas* for their acts and should be kept entirely apart from the world one who has forsaken the order of religious ascetics and one who has entered an order prohibited in law.

19 He is called *Guru* (a teacher) who instructs his pupil, duly addressing him in *Prākṛit* or *Sanskrit*, or employing a local or other dialect.

16 17 *Vīram* pp 406 407

18 *Smṛtiś* dvāṅ eva karma~~andā~~lau loke dūrabahishkṛtau ।
pravragyopanivṛttas ka vrthā pravragitas ka yaś ॥

19 *Vīram* p 72

20 When a quarrel has arisen between prostitutes and the lovers frequenting their house the principal prostitutes and the lovers shall decide the dispute in common

21 If other persons (than the neighbours) should give false evidence in a dispute concerning land such low persons shall be condemned to pay the first fine each in his turn

22 A boundary is declared to be of five sorts as it may be either marked by signs (such as trees) or by water (of a river) or by articles deposited under ground or subject to no quarrel (being determined by consent of both parties) or fixed by royal command

23 After having traced those (robbers) with the aid of able spies acquainted with their habits he shall avoid frightening them and shall cause them to be arrested by officials secretly set upon them

24 It is not from the air from the sky from the sea or from other (such parts) that robbers will come therefore one should act thus

25 (The king) shall endeavour to inveigle (thieves and robbers) through cunning spies who are anxious to catch thieves Other skilful and reliable persons also artful talkers and former thieves shall (be appointed to) detect the thieves

26 By giving them wealth and valuable presents,

20 Viv p 102, Col Dig III 1 98 Ratn p 167

21 Viram p 459 Ratn p 212 Other persons i.e. hunters foresters and so forth This text comes in between Nârada XI 7 and 8

22 Ratn p 214, Viram p 452

23 Ratn p 292

24 Ratn p 335 This text should come in immediately after Nârada XIV 25

25-29 Ratn. p 337 Read *kauryapadesais ka* in 26

by causing them to attend at public shows and festivals and by pretending intended robberies they shall cause (the thieves) to assemble together

27 Those who fail to make their appearance on such occasions though skilful spies have been set on them, shall be arrested together with their sons kinsmen and relatives

28 He shall then arrest the thieves after having convicted and enticed them (to make their appearance) and shall inflict capital punishment on them in various ways after having proclaimed (their deeds) everywhere

29 Innocent persons also are seen to mingle with thieves (occasionally) let not the king inflict punishments indiscriminately on such

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i

INTRODUCTION

TO THE

FRAGMENTS OF BRĪHASPATI

THE fragments of *Brīhaspati* are among the most precious relics of the early legal literature of India. Apart from their intrinsic value and interest as containing a very full exposition of the whole range of the Hindu law their close connexion with the Code of Manu gives them a special claim to consideration and renders them a valuable link in the chain of evidence¹ by which the date of the most authoritative code of ancient India has been approximately determined².

The connexion between the Manu and *Brīhaspati Smṛitis* appears first from the way in which *Brīhaspati* refers to and quotes from the Code of Manu. In the chapter on Gambling and Betting *Brīhaspati* says (XXVI 1) Gambling has been prohibited by Manu because it destroys truth honesty and wealth. It has been permitted by others when conducted so as to allow the king a share (of every stake). The observation that Manu disagrees with the other legislators as to the permissibility of gambling is perfectly just. See Manu IX 2-1-2-8 Yāgyavalkya II 199-203 Apastamba II 2, 12, 13 Nārada XVII 1-8 Kātyāyana XXV 1. *Brīhaspati* goes on to say (XXVI 2) that Gambling shall take place under the superintendence of keepers of gaming houses for the purpose of discovering thieves. This rule agrees almost literally with Yāgyavalkya II 203 and the fact that *Brīhaspati* does not refer to Yāgyavalkya by name although he names Manu can only be accounted for by his very particular veneration for the latter, as the fountain head of Sacred Law.—On the

¹ Buhler The Laws of Manu (Sacred Books of the East vol. xxv) pp. cviii. cx.

² What follows up to p. 275 has been reprinted with modifications and additions from a paper on Manu and *Brīhaspati* in the first volume of the Zeitschrift f. d. Kunde d. Mo pp. 275-280.

subject of weights or coins Bṛhaspati says (X 10) 'The quantities beginning with a floating particle of dust and ending with a Kārshāpāna have been declared by Manu. The statements of Manu which are thus referred to by Bṛhaspati may be found Manu VIII 132-137 — In speaking of the Niyoga or appointment of a widow to raise offspring to her deceased husband Bṛhaspati says (XXIV 12) The Niyoga has been declared by Manu and again prohibited by the same, on account of the successive deterioration of the (four) ages of the world it must not take place (in the present or Kali age) This text shows that the conflicting statements of Manu (IX 57-68) with regard to the Niyoga which have been the matter of so much comment among European philologists had already struck his follower Bṛhaspati and were ingeniously explained by him in accordance with the practice of his own times — In the chapter on Inheritance (XXV 33), Bṛhaspati observes that out of the thirteen sons declared by Manu a legitimate son of the body (aurasa) and an appointed daughter (putrikā) are the only ones that represent real issue. It is true that Manu (IX 158 180) speaks emphatically of twelve sons only but the appointed daughter or her son is not among these and he advocates in strong terms the rights of an appointed daughter's son (IX 127-140) and cuts down very much the rights of all the other substitutes for a son (IX, 180 181) This shows that Bṛhaspati's rules on this head are perfectly in keeping with the teaching of Manu — In the chapter on Sale without Ownership (XIII 1) he refers to Manu (VIII 197) by the name of Bhrigu.

Secondly in a number of other instances the Code of Manu though not appealed to by name is nevertheless indirectly less distinctly referred to by Bṛhaspati. Thus in the chapter on Inheritance (XXV 79) he observes that those by whom clothes and so forth have been declared impartible have not decided properly. The well-known *versus memorialis* concerning impartible property the contents of which are further discussed in the sequel by Bṛhaspati occurs both in the Code of Manu (IX 219) and

in the *Vishnu smṛiti* and it may be presumed either that the authors of these two works are the authorities referred to by *Bṛhaspati* or that *Manu* is referred to in the pluralis majestatis as is often the case with teachers. The reason why *Manu* is not referred to by name may be sought in the fact that *Bṛhaspati* does not care to openly avow his dissent from so eminent an authority.—In the chapter on Debts *Bṛhaspati* remarks (XI 4) that interest is divided into four species by some into five by others and by others again into six sorts. Four sorts of interest are mentioned by *Manu* VIII 153.—In the chapter on Inheritance (XV 35) he declares that an appointed daughter or her son has been pronounced equal to a legitimate son of the body. The rights of an appointed daughter as shown before are laid great stress upon by *Manu* and he actually states that an (appointed) daughter is equal to a son (IX 130).

Thirdly, *Bṛhaspati*, even when not expressly referring to *Manu* presupposes throughout an acquaintance with his Code and a very large portion of his *Smṛiti* is devoted to the interpretation of technical terms or to the elucidation or amplification of the somewhat laconic enunciations of *Manu*. Thus, for example in the chapter on Debts (XI 5-11) he explains comments on, and amplifies the four sorts of interest mentioned by *Manu* (VIII 153). In the same chapter (XI, 55-58) he interprets the curious terms used by *Manu* (VIII 49) to denote the various modes of recovering an outstanding debt. In the chapter on Sale without Ownership (XIII 2) he explains the technical term *asvamin* another person than the owner which had been first used by *Manu*. From the general maxim of *Manu* (VIII 2, 11) that the allotment of shares among partners in any undertaking shall be arranged in the same way as for a company of officiating priests *Bṛhaspati* (XIV 20-32) has developed a series of elaborate rules regarding partnership in tillage, workmanship trade musical performances and robbery. In the same way the threefold law of breach of promised obedience, non payment of wages and disputes between the owner of cattle and his servants has been

developed by Brīhaspati (XVI 1, 2) from Manu's two titles of non payment of wages and disputes between master and servant. An analogous course of development may be observed in the chapters on Ordeals Resumption of Gift and Violation of Agreements as compared to the scanty provisions of Manu (VIII 114-116 212-214 218-221) on the same subjects. In the chapter on Boundary Disputes Manu's technical term *maula* an original inhabitant of a place is interpreted by Brīhaspati (XIX 12). It would be easy to multiply examples. One more analogy between the Manu and Brīhaspati Smṛtis seems to be specially deserving of notice. Both agree in arranging the whole field of legal controversies under eighteen heads and it appears from the introductory verses to several chapters (XII 1, XIII 1, XV 1, XVI 1 XVII 1 &c) that Brīhaspati was anxious to discuss the eighteen titles of law in the same order as Manu. Nevertheless he applies an interesting new principle of division to the eighteen titles of law by distinguishing fourteen titles relating to civil law and four titles relating to criminal law (II, 3-9) and introduces a number of subdivisions (II, 2 10, XVI, 1-3 XXII 1 2).

Fourthly Brīhaspati declares emphatically that any Smṛti text opposed to the teaching of Manu has no validity (XXVII 4).

Under these circumstances the tradition preserved in the Skanda purāṇa that there are four versions of the Code of

Result Manu, by Bhṛigu, Nārada, Brīhaspati
and Angiras acquires a peculiar significance

Taking the version attributed to Bhṛigu to be identical with the Code of Manu, the so distant composition of Bhṛigu it is impossible to doubt its connexion with the Nārada¹ and Brīhaspati Smṛtis. It is but natural to find, therefore, that Nārada and Brīhaspati agree very closely inter se as e.g. in adding a title called 'Miscellaneous' to Manu's eighteen titles of law (Brīhaspati XXVII 1) in enumerating and describing three sorts of proof eleven or twelve kinds of witnesses eight or ten 'members of a lawsuit' four parts of a judicial proceeding four sorts of answer in a suit,

various defects of a plaint, three kinds of officiating priests four species of gifts four divisions of violence (sāhasa) five modes of recovery of a debt &c. Many other analogies between the two works may be gathered from a mere cursory comparison of their contents they agree particularly in the use of many technical terms. One of these the designation of a gold coin by the Roman or Greek term *dirāra* i.e. *denarius* (X 15) is an important test for the date of both works and compels us to refer the earlier date of the composition of *Br̥haspati's* law book to the first century A.D. the period to which belong the earliest Indian coins corresponding in weight to the gold denarius of the Romans¹. As regards the lower limit, one might feel inclined to assign an earlier date to *Br̥haspati* than to *Nārada* on the ground of his being a faithful follower of *Manu* in a far higher degree than is *Nārada* who differs from *Manu* on such important points as the names and order of several titles of law the legitimacy of the *Niyoga* &c.² Nevertheless the enlightened views of *Br̥haspati* on the subject of women's rights³ and the advanced character of his teaching generally render it probable that his learned composition belongs to a somewhat more recent period than the *Nārada smṛiti*.

The fact that *Br̥haspati* was considered an inspired writer by the very earliest commentators of law books such as e.g. by *Medhātithi* (ninth century) proves him to have preceded those commentators by several centuries. An analogous result may be obtained by comparing the laws of *Br̥haspati* with the corresponding portions of the Burmese *Dhammathats*, the Buddhist Indian originals of which according to Dr Forchhammer, were composed in the seventh eighth and ninth centuries. The coincidences between *Br̥haspati* and the *Dhammathats* are both numerous and striking⁴. It may be added that

West and Buhler Digest of the Hindu Law I p. 48 Jolly Tagore Lect. p. 56

¹ See above Introduction to *Nārada*. ² Jolly Tagore Lectures, pp. 193-41

Several coincidences between *Br̥haspati* and the *Wagaru* the earliest law book of Burma have been collected by Dr Forchhammer Jardine Proc. Ind. Soc. pp. 5-57-58. For other examples, see Dr Forchhammer's edition of the *Wagaru* pp. 2-36 (twelve) &c.

the judicial proceeding described in the well known drama *Mṛicchakatika* corresponds to the rules laid down by *Brīhaspati* as has been shown elsewhere. For all these reasons the composition of the *Brīhaspati smṛiti* cannot be referred to a later period than the sixth or seventh century A D

Hitherto those texts of *Brīhaspati* have been entirely left aside which relate to other parts of the sacred law than Civil

Religious texts and Criminal Law and Procedure Hemādri's *Katurvargakintāmanī* Devandābhata's

Smṛitīkandrikā, and most other standard *Dharmabandhas* contain a number of texts of *Brīhaspati* on Dana, Vrata, *Prāyashchitta*, and all other parts of the religious law. However an examination of these texts has yielded no definite result and they are not sufficiently numerous by far to admit of reconstructing the purely religious portion of the ancient *Brīhaspati-smṛiti* from them. Nor is it at all improbable that the legal texts of *Brīhaspati* may have formed an independent work from the outset just like the *Nārada smṛiti* or like the Burmese *Dhammathats* in which forensic law was treated by itself without any admixture of religious elements

The legal texts attributed to *Brīhaspati* are so numerous as to make up in their entirety a law book which contains a

Arrangement full exposition of forensic law hardly inferior in size to the *Nārada smṛiti*. The principles

on which the texts have been collected and arranged are the same as in the case of the Quotations from *Nārada*. The preservation of the introductory texts to several titles of law, and the occurrence of many long series of consecutive texts of *Brīhaspati* in the *Dharmabandhas* facilitate considerably the task of arrangement though the original position of many texts in *Brīhaspati's* *Dharmasastra* must needs remain doubtful. For the chapter on Inheritance the following other works have been used besides those consulted for the Quotations from *Nārada*: G. Sarkar's translation of the *Vīramitrodaya* on Inheritance (V); Dr. Burnell's *Madhaviya* and *Varadarāga*, Professor Buhler's edition of the *Uggvalā* of Haradatta, Haradatta's *Gautamiyā Mitāksharā* (MS); Nandapandita's *Vaigyanī* (MS).

BRIHASPATI

I CONSTITUTION OF A COURT OF JUSTICE

1 In former ages men were strictly virtuous and devoid of mischievous propensities. Now that avarice and malice have taken possession of them judicial proceedings have been established.

2 A judicial assembly is declared to be of four sorts: stationary, not stationary, furnished with (the king's) signet ring, and directed (by the king). The judges are of as many sorts.

3 A stationary (court meets) in a town or village, one not stationary is called movable, one furnished with (the king's) signet ring is superintended by the chief judge, one directed (by the king) is held in the king's presence.

4 The king, his chosen representative (the chief judge), the judges, the law (Smṛiti), the accountant and scribe, gold, fire, water, and the king's own officer are ten members of legal procedure.

5 A court of justice is composed of these ten members, and a judicial assembly of this sort in which the king examines causes attentively is comparable to an act of religion.

6 The office of these ten (members) is separately declared for each. The chief judge decides causes the king inflicts punishments the judges investigate the merits of the case.

7 The law furnishes the decree whether victory or defeat, gold and fire serve the purpose of administering ordeals water is required for persons suffering from thirst or hunger.

8 The accountant should compute the sum (in dispute) the scribe should record the proceedings, the king's own officer should compel the attendance of the defendant, assessors, and witnesses.

9 And he should constantly keep both the plaintiff and defendant in custody if they have given no sureties. Of these members (of a court of justice) the king is the head, the chief judge is the mouth.

10 The judges are both arms the law is both hands the accountant and the scribe are the legs gold fire, and water are the eyes and the heart and the king's own officer is the feet.

11 That judicial assembly is equal (in sanctity) to a sacrificial meeting in which there sit seven or five or three Brahmans who are acquainted with the world with (the contents of) the Veda, and with law.

12 In a controversy he examines the (plaint in) question and the answer, he speaks gently at first.

11 M. Macn. I 1 11

12 Vīram p 37. If the reading be correct a double etymology of the term *prāḍvivāka*, a judge, is propounded in this text (1) he who asks or examines (*prīkṣhati*) and afterwards decides (*vadati*) (2) he who speaks gently at first (*prāḡ vadati*). There is another reading *pravadati* for *prāḡ vadati*, under which the former etymology is the only one propounded in this text. It is beyond doubt the true etymology.

(prag vadati) Therefore he is called Pradvivaka (judge)

13 Men qualified by the performance of devotional acts strictly veracious and virtuous void of wrath and covetousness and familiar with (legal) lore should be appointed by the ruler as judges (or assessors of the court)

14 Two persons thoroughly familiar with grammar and vocabulary skilled in (the art of) computation honest, and acquainted with various modes of writing should be appointed by the king as accountant and scribe (respectively)

15 A veracious man who pays obedience to the judges, should be appointed (by the king) as his own officer to summon and to keep in custody the witnesses plaintiff and defendant

16 The king should sit facing the east the judges facing the north, the accountant facing the west and the scribe facing the south

17 The king should cause gold fire water, and codes of the sacred law to be placed in the midst of them also (other) holy and auspicious things

18 In the middle of his fortress he should build a house with water and trees adjacent to it apart (from other buildings) and let him use as court of justice (a room situated) on the eastern side of it, properly constituted and facing the east

19 Furnished with garlands and with a throne

13 Aparârka sadhukarmakrivavuktañ satyadharmaparavaññāñ
akrodhalobhāñ sāstragñāñ sabhyāñ kuryāñ mahābhugā ॥

14 15 Viram p 42 15 16 Māñ p 4 (Vandlik)

17 Smṛitiñ hiraṇyam agnum udakam dharmasāstrāñ kaiva hi
tanmadhye sthāpayed rāgā puṇyāni ka hiraṇi ka ॥

18 19 Viram p 10 The epithet lakshanyām properly con

supplied with grain (decorated) with jewels adorned with statues pictures, and images of deities, and (provided) with fire and water

20 Let the king try causes attended by three judges after having entered the excellent judicial assembly in a sitting or standing posture

21 The king having risen early in the morning and performed ablutions according to rule, and having shown due honour to Gurus (persons entitled to respect) astronomers physicians deities Brahmins and domestic priests

22 And having saluted the Gurus and the rest, should enter the court-room, decorated with flowers, ornaments and (fine) clothes with a cheerful countenance

23 Having entered the judicial assembly in the forenoon together with the seniors ministers, and attendants he should try causes and should listen to (the expositions of) the Purāṇas codes of law and rules of polity

24. Let the king or a member of a twice born caste officiating as chief judge try causes, acting on principles of equity and abiding by the opinion of the judges, and by the doctrine of the sacred law

stituted means constructed according to the rules of architecture
Vīram

20 *Smṛtiḥ rāga kāryāṃ sampasyet sabhyair eva tribhūḥ vṛtāḥ | sabhaṃ eva pravṛtyāgryam āsīnaḥ sthita eva vā ||* Nearly identical with Manu VIII, 10

21 22 *Smṛtiḥ prātar utthāya nr̥patiḥ sauḥarṇyaṃ kṛtvā vidhānataḥ | gurūḥ gṛhyātvā vaidyān devān viprān purohitaṃ || yathāham etān sampūjya sapuṣhpābharaṇāmbaraḥ | abhivādya kaṭagurvādīn sumukhaḥ pravṛset sabhāṃ ||*

23 May p 5.

24 *Smṛtiḥ rāga kāryāṃ sampasyet pradivako-ṭhavaḥ dvigatā | nyāyāgany agratāḥ kṛtvā sabhyasastramate sthitaḥ ||*

25 For persons roaming the forest a court should be held in the forest for warriors in the camp and for merchants in the caravan

26 Cultivators artizans (such as carpenters or others) artists money lenders companies (of tradesmen) dancers persons wearing the token of a religious order (such as Pâsupatas) and robbers should adjust their disputes according to the rules of their own profession

27 (The king) should cause the disputes of ascetics and of persons versed in sorcery and witchcraft to be settled by persons familiar with the three Vedas only and not (decide them) himself for fear of rousing their resentment

28 Relatives companies (of artizans) assemblies (of cohabitants) and other persons duly authorized by the king should decide lawsuits among men excepting causes concerning violent crimes (sahasa)

29 (Meetings of) kindred companies (of artizans), assemblies (of co-habitants) and chief judges are declared to be resorts for the passing of a sentence to whom he whose cause has been previously tried may appeal in succession

30 When a cause has not been (duly) investigated by (meetings of) kindred, it should be decided after due deliberation by companies (of artizans) when it has not been (duly) examined by companies (of artizans it should be decided) by assemblies (of cohabitants), and when it has not been (sufficiently) made out by such assemblies (it should be tried) by appointed (judges)

31 Judges are superior in authority to (meetings of) kindred and the rest, the chief judge is placed above them and the king is superior to all, because he passes just sentences

32 The insight of princes surpasses by far the understandings (of other persons) in the decision of the highest lowest and middling controversies

33 They who are ignorant of the customs of the country unbelievers despisers of the sacred books insane irate, avaricious or troubled (by pain or illness) should not be consulted in the decision of a cause

34 A Brahman is the root of the tree of justice the sovereign prince is its stem and branches the ministers are its leaves and blossoms just government is its fruit.

35 Renown and wealth are the sap of its fruit a dignified station invincibility esteem among men and an eternal residence in paradise is enjoying its fruit.

36 Having recognised these advantages in (the pursuit of) justice, a king should be equitable towards litigants and should pass a just sentence, discarding avarice and other (evil propensities)

II GENERAL RULES OF PROCEDURE

1 This legal procedure is declared, however, to be divided into a number of branches Hear now

33 *Smṛitih deśātārānabhiṣṭā ye nāstikāḥ śāstravargiṇāḥ | unmatīkruddhalubdhārtā na prashāvyā vimṛṣaye ||*

34-36 *Vīram. p 14* Read *bhogo=tha grahapuganam* in 35 *vivādinām | tyaktvā lobhādīkam raga dharmyam* in 36

II 1 2 *Vīram p 292*

its various divisions which may become the causes of lawsuits

2 I will proclaim in due order according to truth (the titles of law) beginning with the recovery of a debt and ending with (the title of) gambling with dice and betting on animals as well as the subdivisions of the titles of law

3 When a master pays wages to the labourers hired by him for the purpose of doing work and the labourers do not work, a lawsuit will arise in consequence

4 When any man injures (another) or when he refuses to give what he ought to give such are the two principal motives for going to law Their subdivisions are manifold

5 Lawsuits are of two kinds according as they originate in (demands regarding) wealth or in injuries Lawsuits originating in wealth are (divided again) into fourteen sorts those originating in injuries are of four sorts

6 Lending money at interest deposits (and treasure trove), (the title) called invalid gifts, concerns of a partnership non payment of wages disobedience disputes concerning land, sale without ownership

7 Revocation of sale and purchase breach of

3 4 *Smṛitē prayākkheḥ keḍ bhṛtum svāmī bhṛtyānām karma kurvatam | na kurvanti ka bhṛtyās keḍ tatra vadaḥ pravartate || himsām yo kurute kaskid deyam vā na prayākkhati | dve hi sikhāne vivādasya tayoṛ bahutara gatiḥ ||*

5-9 *Smṛitē dūpādo vyavahāraḥ syad dhanahimsāsamudbhavaḥ | dvīsaptako rthamūlas tu himsāmūlas kaṭi-rvidhaḥ || kusīda nidhyadeyākhyam sambhūyotthānam eva ka | bhṛtyadānam asu rṣūṣhā bhūvādo-svāmīvikrayaḥ || krayavikrayānusrayaḥ samayātikra*

agreements the law between wife and husband theft the law of inheritance, and gambling with dice

8 These are the fourteen titles of law that originate in (demands regarding) wealth There are again various subdivisions of them owing to the diversity of lawsuits

9 The two kinds of insult violence, and criminal connexion with the wife of another man these have been declared by *Bṛihaspati* to be the four titles of law originating in injury

10 Each of them embraces again several different kinds, according as they are of a superior, middling or of the lowest description Thus are those four subdivided each in its turn

11 Those who understand the eighteen titles of law as proclaimed in the law books to be at the root of all lawsuits, are intelligent men indeed

12 No sentence should be passed merely according to the letter of the law If a decision is arrived at without considering the circumstances of the case violation of justice will be the result

13 The issue of a lawsuit may convert a thief into an honest man and an honourable man into an

mas tathā | śrīpumsayogaḥ steyam ka dāyabhāgo kshadevanam ||
 evam arthasamutthanī padanī tu katurdśa | punar eva prabhinnānī
 kriyābhedaḥ anekadhā || pīrushye dve sāhasaḥ ka paraśrīsam-
 grahas tathā | himsodbhavapadany evam katurv āha *bṛihaspatiḥ* ||

10 11 *Smṛtiḥ* hīnamadhyottamatvena prabhinnānī prīthak
 prīthak | viśeṣa eśhām nirdiśhas katurvānām apy anukramāt ||
 padany aśhādaśatānī dharmasastroditānī tu | mūlām sarvavivādā-
 nam ye vidus te parikṣhakāḥ ||

12-14 *Vīram* p 18 See *Nārada* I 1, 42 71 (above pp 16 23) For the story of *Māṇḍavya* who was falsely charged with theft, see *ibid* p 16, note

offender *Māṇḍavya* acquired the reputation of a thief in consequence of a decision passed without considering the circumstances of the case

14 Dishonest men may seem honest and honest men dishonest so that wrong notions may be easily created therefore sentences should be passed after due consideration of the circumstances only

15 By killing an aggressor a man does not commit sin by any means He who takes the life of one approaching with intent to murder him is 10 offender

16 If one abused returns the abuse or if one struck strikes again and kills the assailant such a man commits no offence

17 He who refrains from killing an aggressor who abuses him aloud and is ready to murder him (because the aggressor) is a virtuous man (otherwise) and practices regularly the recitation of the Veda obtains the same reward as for performing a horse sacrifice

18 The judgment in a doubtful matter is declared to be of four sorts according as it is based on moral law or on the issue of the case, or on custom or on an edict from the king

19 Each of these has been declared to be twofold by the sages owing to the diversity of legal affairs

20 When the matter in dispute has been decided according to equity after due deliberation and

15 *Vīram* p 24

16 *Raghunandana* p 9

17 *Vīram* p 25

18 *Vīram* p 8 See *Narada I* 1 11 (above p 7)

19-24 *Vīram* pp 118 119 I read with *Smṛitih divyair va sod'ntah* in 21, *pramāṇanishkito* in 22 and *pramāṇarahita* in 24

20 21 The first kind is when the truth has been duly ascer

thoroughly examined by means of oaths (or ordeals) it should be known to be a judgment based on moral law

21 When the defendant admits the accusation or furnishes clear evidence of his innocence through performing an ordeal it should be known to be another sort of a decision based on moral law

22 A sentence founded on an examination of the evidence is termed (a decision based on) the issue of the case When (the defendant) tells a lie or makes no answer it is also termed (a decision based on the issue of the case)

23 When a sentence is passed according to the inference (to be drawn from circumstantial evidence) it is termed (a decision based on) custom When it is passed according to local usages it is termed another sort (of a decision based on custom) by the learned in law

24 A decision based on an edict from the king is ordained first for those cases in which no evidence is forthcoming When the law books or the judges are at variance with one another, the second sort (of this species of decisions) is said to be applicable

25 When a sentence is passed exclusively according to the letter of the law it should be con-

tained and a sentence passed accordingly The second kind is when no examination of the facts takes place the question being settled either through a confession on the part of the defendant or through the performance of an ordeal *Smṛitukāndrikā*

22 The evidence here referred to can be human evidence only i.e. the deposition of witnesses documents or possession divine test being referred to in the two preceding texts *Smṛituk*

23 Inference such as when a man is caught with a firebrand in his hand *Smṛituk* See Nārada I, 18, 172-175 (above pp 80, 86)

20-21 Viram. pp 120 121

sidered as (a decision based on) the issue of the case. Moral law is overruled by it.

26 When a decision is passed in accordance with local custom, logic or the opinion of the traders (living in that town) the issue of the case is overruled by it.

27 Where the king disregarding established usage, passes a sentence (according to his own inclination) it is (called) an edict from the king, and local custom is overruled by it.

28 The time honoured institutions of each country, caste and family should be preserved intact, otherwise the people would rise in rebellion, the subjects would become disaffected towards their rulers, and the army and treasure would be destroyed.

29 The maternal uncle's daughter is taken in marriage among the twice born inhabitants of the South. In the central country (Mādhyadesa) they become labourers or artisans, and eat cows.

30 The inhabitants of the East are fish eaters, and their women engage in promiscuous intercourse. In the North the women take intoxicating drinks and in their courses have intercourse with men.

31 The people of Khasa marry the widow of a brother who has died. These men are not subject to the performance of a penance or to punishment on account of any such offence.

32 Thus has legal procedure with its manifold

28-31. *Vuam* p. 29. *May* p. 5. I read *pūrve* for *sarve* in 30 with *Mayūkha Kalpataru* and other compilations. *Baudhāyana* I 2. 1-7.

32. *Smṛitiḥ evam āneśadhā prokto vivaharo vānīśubhāḥ tasya mīmāṃsā d rāga brahmanas ka bal usrutah*

ramifications been represented by the sages The sentence in a legal controversy has to be passed by the king or by a Brahman thoroughly versed in the Veda

33 Against whomsoever an accusation has been raised whether founded on fact or on suspicion let the king summon that man either through (a letter signed with) his seal or through an attendant

34 For one timorous or idiotic or mad or over aged and for women boys, and sick persons a kinsman or appointed agent should proffer the plaint or answer (as their representative)

35 When a man who has a family and relations does not appear before the court through pride after having been summoned (the king or judge) should inflict on him punishment corresponding to the nature of the accusation

36 (The plaintiff) is not permitted to put under restraint a person engaged in study nor one about to marry, nor one sick, nor one afflicted by sorrow nor one insane nor an infant, nor one intoxicated nor a very old man nor one charged with a crime nor one engaged in the king's service nor one performing a vow

37 Nor a soldier at the time of battle nor a husbandman at the time of harvest nor one in a perilous situation nor a (respectable) woman nor one not his own master

38 A king thus obeying the dictates of law in passing sentences acquires widespread renown in

33 Vīram p 52

35 May p 8

38 Vīram p 125

34 Vīram p 53

36 37 Vīram p 56

this world and becomes an associate of great Indra (after death)

39 He who effects a perfect cure by the application of surgical instruments smeared with the ointment of law of persons blinded by ignorance and whose eyes are veiled with a mist of doubt

40 Obtains fame and royal favours in this world and a residence in heaven Therefore should a decision be passed for those who are blinded by doubt

41 An officiating priest and one entrusted with the trial of causes are declared to be equal In a sacrifice the sacrificer acquires religious merit in a lawsuit (the parties obtain) defeat or victory

42 He who divesting himself of avarice hatred and other (evil propensities) passes sentences according to the dictates of law obtains the same reward as for the performance of a sacrifice

III THE PLAINT

1 The part called the declaration the part called the answer the part called the trial and the part called the deliberation of the judges regarding the *onus probandi* these are the four parts of a judicial proceeding

2 The plaint is called the (first) part the answer is the second part the trial is the third part and the judgment is the fourth part

39 40 Raghunandana p 3 I read *svargam* for *sadgam* with *Smṛiti*

41 Raghunandana, p 7

42 *Smṛiti* k lobhadveshadikam tyaktva yah kurvat kâryanirnam i sâstroditena vidhinâ tasya yagnaphalam bhavet ||

III 1 2 Viram pp 59 60

3 In the case of a denial (a judicial proceeding) consists of four parts likewise in the case of a special plea the same rule applies to a plea of former judgment but in the case of a confession it has two parts only

4 When plaintiff and defendant come together each claiming to be first their declarations should be received in the order of their castes, or after considering their respective grievances

5 Those acquainted with (the true nature of) a plaint declare that to be a (proper) plaint which is free from the defects of a declaration susceptible of proof provided with good arguments precise, and reasonable,

6 Brief in words rich in contents unambiguous free from confusion devoid of improper arguments and capable of meeting opposite arguments,

7 When a plaint of this description has been proffered by the plaintiff the defendant should tender an answer conformable to such plaint

3 Vīram p 59

4 Vīram p 60 'When Brahmans and others have entered the judicial assembly simultaneously the four parts of a judicial proceeding should be instituted in the order of their castes the Brahman's cause being tried first of all by the king then the Kshatriyas and so on in the order (of their castes) If the comparative importance or heaviness of the respective grievances of each party differs, the order in which the causes are tried is not made to depend either on the relative priority of each declaration or on the respective caste of the parties If they are all of equal caste the relative priority of the declarations is taken into account If the declarations have been simultaneous and if the litigants are equal in caste and their grievances are also equal the order is made to depend on the choice of the judge and of the assessors of the court Vīram

5-7 Raghunandana p 1-

8 The above and other qualities (of a plaint) having been duly considered a plaint (containing them) may be regarded as a proper plaint one not answering this description is a mere semblance of a plaint

9 That (plaint) which (mentions an act that) has never been done by anybody is called impossible one referring to a slight offence or to a trifling sum is called unmeaning one in which neither a demand nor a grievance is referred to should be known to be purposeless

10 (Or) that plaint is unmeaning which does not concern one of the (fourteen) titles of law relating to the lending of money at interest and so forth and that plaint is purposeless which does not concern one of the (four) titles of law relating to insult and so forth

11 (When a claimant declares) This man is bound to give me a bow made of the horn of a hare the wise declare such a plaint to be unreasonable and unsusceptible of proof

12 When the interests of a town or kingdom are violated by bringing a certain plaint before a chief judge or before the king, it is termed a plaint contrary (to equity)

13 When a man (whether) acting as plaintiff (or as defendant) is forsaken by his strength on being about to make a statement in a suit it is proper

8 *Smṛitiḥ evamādī guṇān samyag alokya ka suniṣṭitam | pakṣaḥ kṛtaḥ samādeyaḥ pakṣabhāsaḥ tv ato'nyatha ||*

9 *Vīram* p 66

10 *Vīram* p 6, Regarding the titles of law see *Bṛhaspati* II 5-9

11 I V 1 67

13 *Rag unandana*, p 11

that a delay should be granted to him according to circumstances and according to his ability

14 Let him remove superfluous statements and amplify incomplete ones and let him write down (everything) on the floor till the (whole) matter has been definitely stated

15 The plaintiff is at liberty to alter his declaration when it is defective or redundant till the defendant has tendered his answer in the presence of the judges

16 When the plaintiff through timorousness does not dare to speak it devolves on the judges to amend his declaration according to the circumstances of the case

17 A charge founded on suspicion (one founded on) fact a petition regarding the recovery of a debt and claiming a fresh trial of a cause previously tried thus a plaint is represented as fourfold

18 The plaint is fourfold and so is the answer the judgment is declared to be of four kinds also by some it is represented as being of eight sorts

19 Suspicion is explained to mean doubt fact is (said to be) an insight into the real nature of a matter a petition regarding the recovery of a debt is (plea of) error, a fresh trial is the repetition of a previous trial

IV THE ANSWER

1 When the plaint has been well defined, a clear exposition given of what is claimed and what not and the meaning of the plaint fully established, (the

judge) shall then cause the answer to be written (by the defendant)

2 If the defendant does not make an answer fully meeting the contents of the plaint he shall be compelled to pay by gentle remonstrances, and the other (two) methods (to be indicated directly)

3 Kindly speeches are gentle remonstrances intimidation is pointing out dangers force consists of depriving one of his property or striking, or binding him

4 When a man makes no answer though both (mild and harsh methods) have been adopted against him he is defeated, and liable to punishment after the lapse of a week

5 When the defendant asks for a delay through (natural) timidity, or terror or because his memory has been deranged the delay shall be granted to him

6 He should be allowed (a delay extending to) one day, or three days or five days or seven days or a fortnight or a month or three seasons (equalling six months) or a year according to his ability

7 The insane and intoxicated those abandoned by their relatives or friends, those charged with a heavy crime idiots persons cast off from society and infants should be considered unable to deliver an answer

8 One should not cause to be written an answer

2-4 *Viram* p 74

5 6 *Viram* p 138

1 *Tod unmattamattani dhu a mahaparakadush tãh i gadapa v dd abalas ka vigñeyas te nãttarãh* || Such person should appoint an agent to deliver the answer in their place *Tod*

8 *Smrutẽ prastutãnyam ka madhvastham nyũnãdhikam asam gatam i avyapyasãram sandigdham pratipaksham na lekhahe* ||

which wanders from the subject or which is not to the point, too confined or too extensive or not in conformity with the plaint or not thorough enough or absurd or ambiguous

9 If (the defendant) confesses he shall state his confession in the case of a denial he shall cause (his denial) to be written, and so (should he record) his special plea in an answer by special plea and his previous victory in an answer by previous victory

10 A denial called forth by fear (of punishment) is contemptible in the eyes of men familiar with law, a true confession is declared to be meritorious

11 In a plea by victory in a former trial a true statement is praised by the virtuous a false one is sinful and causes the defeat of the defendant.

V THE TRIAL

1 When litigants are quarrelling in a court of justice the judges after examining the answer shall adjudge the burden of proof to either of the two parties

2 The judges having heard both the plaint and the answer and determined to which party the burden of proof shall be adjudged that person shall substantiate the whole of his declaration by documents or other proofs

3 The plaintiff shall prove his declaration, and

9-11 *Tad tathye tathyam prayuṅgīta muthyāyam kâpi lekhayet | kâranam kâranopete prâggraye tu gayam tathâ || bhayadrishhodbhavâ mithyâ garhita sastravedibhiḥ | satvâ sampratipattis tu dharmyâ sâ parikūrtitâ || prannyâyakarane tathyam ślāghyam sadbhīr udāhṛtam | viparītam adharmyam syāt pratyarthī hānam apnuyāt ||*

the defendant his special plea, victory in a previous trial shall be proved by a document recording that victory

4 When people try to excite fear or to cause dissension or terror (among the judges or witnesses) or to throw (other) obstacles in their way such litigants lose their suit

5 One who absconds after receiving the summons one who remains silent one convicted (of a crime) by the (depositions of) witnesses, and one who admits the correctness of the charge such are the four losers of their suit.

6 One who absconds loses the suit after three fortnights, one who remains silent after a week and one convicted by the witnesses or confessing his crime all at once

7 He who announces witnesses and does not produce them afterwards within thirty days or three fortnights suffers defeat in consequence

8 When a person has promised to appear at a trial or for the performance of an ordeal and does not make his appearance it must not be viewed as fraud

9 If an obstacle caused by fate or the king should intervene during that time he does not lose his cause through the mere non-observance of the fixed period

10 Those (litigants) who make a private arrangement with one another when the plaint and the

4 Vīram. p 99

5 Vīram. p 102

6 7 Vīram p 102

8 Vīram p 103 I read *kṛtvopasthānanistāyam* (with *Smṛtiśāndhika*

9 Vīram p 103

10 Vīram. p 103

answer have been delivered and the judgment is about to be given shall be compelled to pay twice the amount (in dispute) as a fine

11 When the plaint and the answer have been reduced to writing and the trial has commenced the two parties may be welded together like two pieces of red hot iron

12 While both parties are in suspense there regarding the (approaching declarations of the) witnesses and judges those litigants are clever who arrive at a mutual understanding while the uncertainty lasts

13 When the evidence is equally strong on both sides and law and custom divided, in such a case a mutual reconciliation between the two parties through royal order is recommended

14 Gain of religious merit and wealth, and renown accrues to the ruler from an equitable decision the witnesses and assessors are exempt from censure and enmity ceases

15 When an unfavourable or a favourable decree punishment or praise renown or infamy has been obtained whereas (continued) strife among men leads to sin

16 Therefore should an intelligent (prince) enact that which has been propounded by dutiful and equitable associations corporations and chief judges (in an impartial spirit) devoid of malice and avarice

11-16 Viram p 104 Read dvayoh samaptayoh in 11 with *Smṛitikanḍikā*

12 The translation follows the gloss of the Kaipataru, as quoted in the Viramitrodaya. The Ratnakara (ibid) translates the first half as follows. When the witnesses and judges are at variance with one another

17 Evidence is declared to be twofold human and divine Each of these is again divided into a number of branches by sages declaring the essence of things

18 Human evidence is threefold as it consists of witnesses writings and inference Witnesses are of twelve sorts writings are declared to be tenfold inference is twofold divine test is ninefold

19 In the case of an answer of the first or third kinds divine and human proof should be employed but in the case of an answer of the fourth kind an attested document recording the success of either party should be produced

20 In the cases of a plea of former judgment and of a special plea the defendant shall prove the contents of his answer but in the case of a denial the plaintiff shall prove the contents of the plaint

VI THE JUDGMENT

1 He is said to have gained his cause in this world who has proved his claim, and has been honourably dismissed by the chief judge and the other judges, and received a document recording his victory

2 Punishment corresponding to the nature of the offence shall be ordained there (in the decree)

17 18 Vīram p 110

19 Smṛitīḥ prathame vā trīṣṭe vā pramāṇaṁ dāvamānusham | uttare śiṣṭe katurthe tu saśikṣiḥ gayapattakam || An answer of the first kind is a denial an answer of the third kind is a confession an answer of the fourth kind is a plea of former judgment

20 Smṛitīḥ prāntīyāṁ pratyakṣānde pratīkṣīḥ sadhaye svakam | uttaraṇam pratyakṣārtham arthīḥ mūlvottare punaḥ ||

VI, 1 Raghunandana, p. 60

2 Vīram p 124

3 Whatever has been transacted in a suit, the plaint answer and so forth as well as the gist of the trial should be noted completely in the document recording the success (of the claimant or defendant)

4 When the king gives the victorious party a document recording the plaint answer and trial and closing with the sentence it is called a document recording the success (of either party)

5 When a man does not feel satisfied with a decision passed by meetings of kindred or other (resorts for the redress of wrongs) the king should revise the decision declared by them and institute a fresh trial, if it should prove unjust

6 After having considered the matter in common with many Brahmans well versed in science he should punish the wicked men who were acting as judges in the former trial, together with the victorious party

7 One appointed by his master to look after his expenses and to superintend (transactions regarding) tillage loans and trade is called a manager

8 Whatever has been transacted by him is valid whether relating to receipt, non receipt expenses or income and whether it may have been transacted at home or abroad. The master must not annul such transactions as these

3 4 Raghunandana p 60 I read *pūrvottarakriyāyuktam* in 4

5 6 *Viram* p 123

7 8 *Viram* p 127 Read in 7 *krīśhikusīdavanigye* These two texts relate to the subject of valid and invalid transactions which is generally discussed along with the rules of judicial procedure and with the *onus probandi* and judgment in particular They might also have been inserted in the chapter on Master and Servant.

VII WITNESSES

1 A subscribing witness, one caused to be written a secret witness one who has been reminded a member of the family a messenger a spontaneous witness an indirect witness a stranger who has accidentally witnessed the deed

2 The king a chief judge and the (people of the) village thus have the twelve kinds of witnesses been declared I am going to declare precisely in order their respective characteristics

3 He is called a subscribing witness who enters in a deed his own as well as his father's caste name and so forth, and his place of residence

4 He is termed one caused to be written who has been distinctly entered in the deed together with the details of the agreement by the plaintiff when writing a contract of loan or another (contract)

5 He is called a secret witness who is made to listen to the speeches of the debtor standing concealed behind a wall (and relates them) just as they were spoken, (when the debtor tries to deny them)

6 He is called one reminded who after having been appointed and invited to be present at a transaction concerning a loan deposit purchase, or the like is repeatedly reminded of it

7 He is designed as a family witness who is appointed by both parties to witness a deed of partition, gift, or sale, being connected and on good

terms with both parties, and acquainted with (the rules of) duty

8 He is denominated a messenger who is a respectable man esteemed and appointed by both parties, and has come near to listen to the speeches of the plaintiff and defendant

9 He is a spontaneous witness who declares that he has witnessed the transaction after having approached the court of his own accord, while a cause is being heard

10 That witness who communicates what he has heard to another man at a time when he is about to go abroad, or lying on his deathbed should be considered as an indirect witness

11 He also is called an indirect witness who repeats, from his own hearing or from hearsay, the previous statements of actual witnesses

12 He is called a secret witness to whom an affair has been entrusted or communicated by both parties or who happens to witness the transaction

13 The king in person having heard the speeches of plaintiff and defendant, may act as witness if both should quarrel with one another

14 If after the decision of a suit a fresh trial should take place the chief judge together with the assessors may act as a witness there but not in any other case

15 The (people of the) village may no doubt give testimony even without a special appointment, as to what has been anywhere spoiled or damaged in the boundary line

11 The reading bhâshatâm in the Viramitrodaya is a misprint for bhâshate

16 There should be nine seven five four or three witnesses or two only if they are learned Brahmans are proper (to be examined) but let him never examine a single witness

17 Of subscribing and secret witnesses there should be two (of each sort) of spontaneous reminded family witnesses and indirect witnesses there should be three four or five (of each sort)

18 A single witness even may furnish valid proof if he is a messenger an accountant one who has accidentally witnessed the transaction or a king or chief judge

19 (A witness) should be exhorted by judges acquainted with law by speeches extolling veracity and denouncing falsehood

20 Whatever religious merit has been acquired by thee from the time of thy birth to the time of thy death all that will be lost by thy telling a falsehood

21 An iniquitous judge a false witness and the slayer of a Brahman are pronounced to be criminal in an equal degree nor is a killer of an embryo or a destroyer of wealth considered as a greater sinner than they are

22 Knowing this a witness should give evidence according to truth

16-18 May p 23 The accountant is a species of messenger Vīramitrodaya Regarding the witness who has accidentally witnessed the transaction see VII 12

19-22 *Tod satyaprasaṁśāṁ. Janair anṛtaśīpavadanaiḥ | sabhavaḥ sa bodhaniyas tu dharmasāstrapavedionaiḥ || Ā ganmatas ka maraṇat sukṛtaṁ yadupargitaṁ | tat sarvaṁ naśam avati anṛtaśīpavadanaiḥ || kṛta abhyañ kṛtasākṣī brahmaha ka samāñ smṛtāñ | bhrūmaha vittaḥ kaishāñ nādhikañ samudahratañ || eva || vaita 'at sakṣi vatañbhū aṁ vadet tatañ ||*

23 After putting off his shoes and his turban he should stretch out his right hand and declare the truth after taking in his hands gold, cow dung or blades of sacred grass

24 When witnesses summoned (in a suit) are faulty the opponent may expose them But a litigant trying to cast a blemish on faultless witnesses is liable to pay a fine to the same amount (as the property in dispute)

25 Whatever faults there may be in a document or in witnesses they should be exposed at the time of the trial those cannot be used as valid objections which are declared afterwards

26 He whose documents or witnesses are objected to in a suit cannot gain his cause till he has removed the objections raised against it

27 I will now state according to the rules of science which men may be appointed as witnesses and which others should be avoided as being low wretches

28 Those may be witnesses who are in the habit of performing religious ceremonies taught in the Vedas and Smṛtis free from covetousness and malice of respectable parentage, irreproachable and zealous in performing austerities practising liberality and exhibiting sympathy (with all living creatures)

29 The mother's father the father's brother the

23 Vīram p 172

24 May p 20 I read arthī for arthe with Vīram

25 May p 26 26 May p 27

27 Smṛtūḥ prasharvāḥ sākshino ye tu vargyas kaiva narā dhamaḥ | tan ahaṁ kathayishyāmi sāmpratam jāstrakoditān ||
 jrau'asmārtakriyāyuktā lobhadveshavivargitāḥ | kulīnāḥ sākshino
 -mudyās tapodānadayānvitā ||

29 May p 20

wife's brother and maternal uncle a brother a friend and a son-in-law are inadmissible witnesses in all disputes

30 Persons addicted to adultery or to drinking gamblers those who calumniate everybody the insane the suffering violent persons, and unbelievers cannot act as witnesses

31 If a witness being summoned does not make his appearance without being ill he should be made to pay the debt and a fine, after the lapse of three fortnights

32 Where the contents of the plaint have been fully corroborated by the witnesses it is (valid) testimony in every other case (the plaintiff) will not succeed with his claim

33 When nothing less (than what has been declared in the plaint) is stated with regard to place time age, caste, number, matter and quantity the cause should be considered to have been proved

34 Let him preserve even by telling a lie a Brahman who has once sinned through error and is in peril of his life and oppressed by rogues or other (enemies)

35 In a conflict between witnesses, (the testimony of) the majority should be received when the number is equal (on both sides, the testimony of)

30 Viram p 160

31 Smṛitih ahūto yas tu nāgakṣhet sakshī ogavivargitah | rinam damam ka dāpyah syat tripakshāt pura as tu sah ||

32 Smṛitih yatrāreshah pratigñārthah sakshibhuḥ prativartitah | śakshyam syad anyathā tu tam sadhyārtham na samāpnuyat ||

33 May p 29

34 Smṛitih sakṛi pramādaparadh vipram vyāpadi pūritam | saśa dibh r vādyamānam rakshed uktvānrtāny api ||

35 Tod sakshidvaidhe prabhūtās tu grāhivāh sāmye guṇādhikāh | guṇādhikā dhē kṛyayuktas tatsāmye smṛti

the more virtuous ones when the virtuous (witnesses) are divided (the testimony of) those specially eminent for the performance of acts of religion when they are divided (the testimony of) those endowed with a superior memory

VIII DOCUMENTS

1 The rule regarding the number of witnesses and their respective characteristics has been thus communicated to you now I will state in order the laws regarding documents

2 Within a sixmonths time even doubts will arise among men (regarding a transaction) Therefore the letters occurring in a writing were invented of yore by the Creator

3 Writings are declared to be of three kinds those written by the king those written in a particular place and those written (by a person) with his own hand Their subdivisions again are numerous

4 Writings proceeding from (ordinary) people are sevenfold, (viz) a deed of partition, of gift of purchase of mortgage of agreement of bondage of debt and other (such deeds) The kings edicts are of three sorts

VIII 1 Vīram p 188

2 Vīram p 188 Hiouen Thsang (I 71) the celebrated Chinese pilgrim reports the Indian tradition that letters were invented by the deity Fan (Brahman) See Fuhrer *Lehre von den Schriften in Bṛhaspati's Dharmasāstra*, p 27 Narada I 5 70 (above p 58)

3 May p 16 The term written in a particular place seems to relate to documents written by a professional scribe and attested by subscribing witnesses See Narada I 10 135 (above p 75)

4 May p 17 The term *ādi* and other (such deeds) is explained to denote deeds of purification or of reconciliation or regarding a boundary or the rules of a corporation

5 Where brothers being divided in interests according to their own wish make a deed of division among themselves it is called a partition deed

6 When a person having made a grant of landed property records it in a deed as being enduring as long as the moon and sun are in existence and which must never be cut down or taken away it is termed a deed of gift

7 When a person having purchased a house field or other (property) causes a document to be executed containing an exact statement of the proper price paid for it it is called a deed of purchase

8 When a person having pledged movable or immovable property executes a deed stating whether (the property pledged) is to be preserved or used it is termed a mortgage deed

9 When (the people of) a village or province execute a deed of mutual agreement (the purpose of) which is not opposed to the interests of the king and in accordance with sacred law it is designed as a deed of agreement

10 That document which a person destitute of clothes and food executes in a wilderness stating, I will do your work is termed a deed of bondage

11 That contract of debt which a man having borrowed money at interest executes himself or causes to be written (by another) is called a bond of debt by the wise.

12 Having given a tract of land or the like the

5-11 Mav p 16

12-18 Viram p 192 For specimens of royal grants precisely corresponding to the rules laid down here see e.g. Dr Burnell's *Elements of South Indian Palaeography* pp. 8-10.

king should cause a formal grant to be executed on a copper plate or a piece of cloth stating the place the ancestors (of the king) and other particulars

13 And the names of (the king's) mother and father and of the king himself (and containing the statement that) 'This grant has been made by me to day to N N the son of N N, who belongs to the Vedic school N N

14 As being endurable while the moon and sun last and as descending by right of inheritance to the son grandson, and more remote descendants and as a gift which must never be cut down or taken away and is entirely exempt from diminution (by the allotment of shares to the king's attendants, and so forth)

15 Conveying paradise on the giver and preserver, and hell on the taker for a period of sixty thousand years as the recompense for giving and taking (the land)

16 (Thus the king should declare in the grant) the Secretaries for peace and war signing the grant with the remark I know this

17 (The grant) should be provided with (the king's) own seal and with a precise statement of the year month and so forth of the value (of the donation) and of the magistrate Such a document issued by the king is called a royal edict

18 When the king satisfied with the faithful services valour or other (laudable qualities) of a person, bestows landed or other property on him it

13 All commentators explain that the name of the particular Veda such as e.g. the Rīg veda or the Kāṣṭhā branch of the Yajur veda should be given which the donee is studying

is (called) a writing containing a mark of royal favour

19 That which establishes a claim recording the four parts of a judicial proceeding and bearing the royal seal, is termed a document of success (or decree)

20 Clever forgers acquainted with place and time will make a writing similar (to the original document) Such (writings) should be examined with great care

21 Women infants the suffering and persons unacquainted with the art of writing are deceived by their own relations fabricating documents signed with their names Such (forgery) may be found out by means of internal evidence and legitimate titles.

22 A document executed by a madman an idiot an infant one who has absconded through fear of the king a bashful person, or one tormented by fear is not invalidated (by an impossibility to produce its author)

23 (But as a rule) a document executed by a dying person an enemy one oppressed with fear a suffering person a woman one intoxicated distressed by a calamity at night by fraud or by force does not hold good

24 Where even a single witness entered in a deed is infamous and reproached (by the public voice) or where its writer is held in such estimation, it is called a false document

19 *Smṛiti* quoted by, Barnell Elements of South Indian Palaeography, p. 100

20 21 *Viṛam* p 197

22 *Viṛam* p 198 The translation follows the gloss in the *Viṛam* odaya

3 24 *May* p 20

25 A writing being spoiled by fire or executed a long time ago or soiled with dirt or intended for a very short period only, or containing (a number of) mutilated or effaced syllables, is reckoned as a false document

26 Let a man show (a document) on every occasion to (meetings of) families associations (of traders) assemblies (of cohabitants) and other (bodies of persons) and read it out to them and remind them of it, in order to establish its validity

27 The acquirer (of landed or other property) should establish the written title (under which he is holding it) his son should establish the fact of possession only If (the father) has been impeached in a court of justice the son also should be required to prove the written title

28 When a loan (recorded in a bond) is not expressly claimed from a debtor who has means enough (to discharge it) and is at hand the bond loses its validity as the debt is presumed to have been paid (in that case)

29 A writing which has neither been seen nor read out for thirty years, should not be recognised as valid even though the (subscribing) witnesses be living

30 When a man does not produce the bond and omits to ask his debtor (to restore the loan) after

25. Aparārka and *Smṛitī* quoted by Führer No 29

26 *Vīram* p 200.

27 *Vīram* p 199

28-30 Aparārka, quoted by Führer loc cit. Nos 33-35 *Smṛitī* ('Kātyāyana') *Tod* In 28 I read *suddharmasankayā* for *suddham nārāṅkayā* with *Todārananda*

30 The interest on a loan according to the Indian Law of Debt, ceases on its becoming equal to the principal

his loan has ceased to yield interest the bond becomes suspected

31 A document is certainly not overruled either by witnesses or by an oath (or ordeal) but its validity is diminished by neglect if it is neither shown nor read

IX POSSESSION

1 This set of rules regarding witnesses and documents has been propounded The law concerning the acquisition of immovable property and possession will be proclaimed next

2 Immovable property may be acquired in seven different ways, viz by learning by purchase by mortgaging by valour with a wife (as her dowry) by inheritance (from an ancestor) and by succession to the property of a kinsman who has no issue

3 In the case of property acquired by one of these seven methods viz inheritance from a father (or other ancestor) acquisition (in the shape of a dowry) purchase hypothecation succession valour, or learned knowledge possession coupled with a legitimate title constitutes proprietary right.

4 That possession which is hereditary or founded on a royal order, or coupled with purchase, hypothecation or a legitimate title possession of this kind constitutes proprietary right

31 *Smṛut* and *Aparārka*, quoted by Führer No 38

IX 1-7 *Viram* pp 203 204

1 The *Viramirodaya* argues that, although immovable property is principally referred to the same law applies a fortiori to movable property

5 Immovable property obtained by a division (of the estate among co-heirs) or by purchase or inherited from a father (or other ancestor) or presented by the king is acknowledged as one's lawful property it is lost by forbearance in the case of adverse possession

6 He who is holding possession (of an estate) after having merely taken it occupying it without meeting with resistance becomes its legitimate owner thus and it is lost (to the owner) by such forbearance.

7 He whose possession has been continuous from the time of occupation and has never been interrupted for a period of thirty years cannot be deprived of such property

8 That property which is publicly given by co-heirs or others to a stranger who is enjoying it cannot be recovered afterwards by him (who is its legitimate owner)

9 He who does not raise a protest when a stranger is giving away (his) landed property in his sight cannot again recover that estate even though he be possessed of a written title to it

10 Possession held by three generations produces ownership for strangers no doubt when they are related to one another in the degree of a *Sapinda*, it does not stand good in the case of *Sakulya*

11 A house field commodity or other property having been held by another person than the owner

5, 6 Col. Dig V 6 384

8 9 Viram p 209

10-12 Col Dig V 7 396

10-14 Viram p 221 *Sapindaship* in this rule includes four generations, the term *Sakulya* is used to denote more remote relations

is not lost (to the owner) by mere force of possession if the possessor stands to him in the relation of a friend relative, or kinsman

12 Such wealth as is possessed by a son in law a learned Brahman or by the king or his ministers does not become legitimate property for them after the lapse of a very long period even

13 Forcible means must not be resorted to by the present occupant or his son in maintaining possession of the property of an infant or of a learned Brahman or of that which has been legitimately inherited from a father,

14 Nor (in maintaining possession) of cattle a woman a slave, or other (property) This is a legal rule

15 If a doubt should arise in regard to a house or field of which its occupant has not held possession uninterruptedly he should undertake to prove (his enjoyment of it) by means of documents (the depositions of) persons knowing him as possessor and witnesses

16 Those are witnesses in a contest of this kind who know the name the boundary the title (of acquisition) the quantity the time, the quarter of the sky and the reason why possession has been interrupted

17 By such means should a question regarding occupation and possession be decided in a contest concerning landed property but in a cause in which

15-17 Viram p 2

16 Read rīmāgha/aga nam The title the cause of ownership such as gift The quantity of land. The quarter of the sky a description of the region in which a certain estate is situated The time at which the estate was acquired. Tadarānanda

no (human) evidence is forthcoming, divine test should be resorted to

18 When a village field or garden is referred to in one and the same grant they are (considered to be) possessed of all of them though possession be held of part of them only (On the other hand) that title has no force which is not accompanied by a slight measure of possession even

19 Not to possess landed property not to show a document in the proper time and not to remind witnesses (of their deposition) this is the way to lose one's property

20 Therefore evidence should be preserved carefully if this be done lawsuits whether relating to immovable or to movable property are sure to succeed

21 Female slaves can never be acquired by possession without a written title, nor (does possession create ownership) in the case of property belonging to a king or to a learned Brahman or to an idiot or infant.

22 It is not by mere force of possession that land becomes a man's property a legitimate title also having been proved, it is converted into property by both (possession and title) but not otherwise

18 Viram pp 221 2 2 Col Dig V 6 383

19 20 *Tad bhūmer abhuktir lekhyasya yathākālam adarsanam | asmaranam sākshinām ka svārthahānikarāni ka || tasmād yatnena kartavyam pramānaparipālanaṃ | tena lāryām sīdhyanti sthāvarāṃ karāni ka ||*

21 *Smṛtiḥ na strīnām upabhogaḥ syād vinā lekhyam katham kana | rāgasrotiriyavitte ka gadabāladhane tathā ||*

22 *Smṛtiḥ bhuktikevalayā naiva bhūmiḥ siddhum avāpnuyāt | āgamenāpi suddhena dvābhyām sīdhyati nānyathā ||*

23 Should even the father grandfather and great grandfather of a man be alive, land having been possessed by him for thirty years without intervention of strangers

24 It should be considered as possession extending over one generation possession continued for twice that period (is called possession) extending over two generations possession continued for three times that period (is called possession) extending over three generations (Possession continued) longer than that even is (called) possession of long standing

25 When the present occupant is impeached, a document or witness is (considered as) decisive When he is no longer in existence, possession alone is decisive for his sons

26 When possession extending over three generations has descended to the fourth generation it becomes legitimate possession and a title must never be inquired for

27 When possession undisturbed (by others) has been held by three generations (in succession), it is not necessary to produce a title possession is decisive in that case

28 In suits regarding immovable property (pos

23 24 *Smṛitē* pitā pitamahō yasya givēka prapī amahāḥ ।
trimsat samā yā tu bhukta bhūmī avyāhatā paraiḥ ॥ bhuktā sā
pauruṣī gñeyā dviguṇā ka dvipauruṣī । tripauruṣī ka triguṇa
paratā syāt kṛantānī ॥

25 *Smṛitē* yatrāhartābhīyuktaḥ syal lekhyam sakṣī tada guruḥ ।
tadabhave tu putranām bhuktī eka garīyasī ॥

26 *Smṛitē* bhuktis tripuruṣī ya ka katurthe sampravartitā ।
tad bhogasthīratam yātu na prākṣhed agamam kvakī ॥

27 *Smṛitē* anīshedhena yad bhuktam puruṣais tribhir eva tu ।
tatra naivāgamaḥ kāryo bhuktis tatra garīyasī ॥

28 *Smṛitē* sthavareshu vivādeshu kramat tripuruṣī ka ya ।
svatantraiva hi sā gñeyā p — — — sadhyamāyē ॥

session) held by three generations in succession should be considered as valid and makes evidence in the decision of a cause

29 He whose possession has passed through three lives, and is duly substantiated by a written title cannot be deprived of it such possession is equal to the gift of the Veda

30 He whose possession has passed through three lives and has been inherited from his ancestors cannot be deprived of it, unless a previous grant should be in existence (in which the same property has been granted to a different person by the king)

31 That possession is valid in law which is uninterrupted and of long standing interrupted possession even is (recognised as valid) if it has been substantiated by an ancestor

32 A witness prevails over inference a writing prevails over witnesses undisturbed possession which has passed through three lives prevails over both

33 When an event (forming the subject of a plaint) has occurred long ago and no witnesses are forthcoming he should examine indirect witnesses or he should administer oaths or should try artifice

29 *Smṛitiḥ yasya tripurushā bhuktiḥ samyag lekhyasamanvita । evamvidha brahmadeya hartum tasya na sakvate ॥* The gift of the Veda i.e. instruction is mentioned as an instance of an inalienable gift

30 *Smṛitiḥ yasya tripurushā bhuktiḥ pāramparyakramāgata । na sa kalayitum sakyā pūrvakak kṛtāsanad rite ॥*

31 *Smṛitiḥ bhuktir balavatī sastre py avikkṛnnā kīrantanī । vikṛnnāpī h. sâ gñeyā yā tu pūrvaprasadhita ॥* If it has been substantiated by an ancestor, i.e. if a previous possessor has adduced a legitimate title

32 Raghunandana p 49

33 Viram p 223

X ORDEALS

1 A forger of gems pearl or coral, one with holding a deposit a ruffian and an adulterer shall be tested by oaths or ordeals in every case

2 In charges relating to a heavy crime or to the appropriation of a deposit the king should try the cause by ordeals even though there be witnesses

3 When a thing has happened long ago or in secret, or when the witnesses have disappeared long ago, or are perjured all of them the trial should be conducted by having recourse to an ordeal

4 The balance fire water poison and fifthly sacred libation sixthly grains of rice seventhly a hot piece of gold are declared (to be ordeals)

5 The ploughshare is mentioned as the eighth kind the ordeal by Dharma (and Adharma) as the ninth All these ordeals have been ordained by the Self-existent (Brahman)

6 Truth, a vehicle weapons cows seeds, and gold venerable gods or Brahmans the heads of sons or wives

7 By these have oaths been ordained which are easy to perform and proper for trifling occasions

8 When a quarrel between two litigants has arisen regarding a debt or other charge that ordeal

X 1-3 Vîram p 114

4 M Macn X 1 2 (uncertain) Vîram p 220

5 Vîram p 225 For a description of the ordeal by Dharma and Adharma see the laws of Pitamaha

6 7 Vîram p 226 See Manu VIII 114 Narada I 19 248 (above p 100)

8 *Tod rîzadîshu tu kâryeshu visamvîde parasparam i divyam samkhyavitam deyam purushâpekshayâ tatha u*

must be administered which corresponds to the amount (of the sum in dispute) and to the (character or strength of the) individual (to be examined)

9 (The ordeal by) poison should be administered when (property worth) a thousand (Panas) has been stolen, (the ordeal by) fire when a quarter less than that (or 750 has been stolen)

10 When the charge concerns four hundred the hot piece of gold should be administered (When it concerns) three hundred the grains of rice should be given and the sacred libation, (when it concerns) half of that

11 When a hundred has been stolen or falsely denied purgation by Dharma should be administered Thieves of cows should be subjected by preference to the (ordeal by the) ploughshare by the judges

12 These figures are applicable in the case of low persons for persons of a middling kind double is ordained and for persons of the highest rank the amount has to be fixed four times as high by persons entrusted with judicial affairs

13 The quantities (of various coins or weights) beginning with a floating particle of dust and ending with a Kârshâpana have been declared by Manu They are applicable both to ordeals and to fines

14 A Nishka is four Suvarnas A Pana of

9-12 Vîram p 230 I read with Smṛituk, katuḥsatâbhuyoge in 10 and sabhyaik phâlam prayatnataḥ in 11

11 Dharma test of right and wrong is the ordeal which consists of drawing lots or slips of white and black paper

12 'Eminent persons through their birth qualities or virtue The same interpretation applies to the two other terms Vîram

13 Vîram p 233 See Manu VIII, 131-138

14 15 Vîram p 234 I read kândikâ for kândrikâ in 11 with Vîramirodaya.

copper is a Kârshika (having the weight of one Karsha) A coin made of a Karsha of copper has to be known as a Kârshika Pana.

15 It is also called an *Andikâ* Four such are a *Dhânaka* Twelve of the latter are a *Suvarna* That is also called a *Dinâra* (denarius)

16 (The testimony of) witnesses is apt to become invalid, whether it be through affection anger or avarice An ordeal properly administered never loses its validity

17 When a doubt arises with regard to a document or oral evidence and when ratiocination also fails purgation through ordeal (is the proper test)

18 Let an ordeal be administered according to the established rule by persons acquainted with the rule of ordeals If it is administered against the rule it is ineffective as a means of proving what ought to be proved

19 If one who has been subjected to the ordeal by balance goes down on being weighed (for the second time), he shall be held guilty If he remains level he shall be balanced once more If he rises, he gains his cause

20 Should the scale break or the balance or beam, or iron hooks split or the strings burst or the transverse beam split he would have to be declared guilty

15 Nearly identical with Narada, Appendix, 62 (p 232)

16 *Vīram* p 242

17 *Smṛiti* likhite sâkshuvade ka samdeho yatra gâyate | anu mâne ka sambhrante tatra daivam visodhanam ||

18 *Tod.* yathoktavâdh nâ deyam divyam divyavisaradâh | yatrok tapradattam tu na satyam sâdhyasadhane ||

19 *V* p 253

20 *Vīram* p 254

21 (In the ordeal by water) he should immerse the individual in water and discharge three arrows

22 He is acquitted (in the ordeal by poison) who has digested poison which has been given to him according to rule without the application of spells or antidotes. Otherwise he should be punished and compelled to pay the sum in dispute

23 To whatsoever deity the accused happens to be devoted let (the judge) bathe the weapon of that deity in water and give him to drink three handfuls of it

24 He to whom no calamity happens within a week or a fortnight (either to himself or) to his son wife or property is innocent beyond doubt

25 Let a man chew grains of rice after having kept a fast and purified himself at a time when the sun is not visible. He is acquitted if what he spits out is pure but if it be mixed with blood he must be (held) guilty

26 Let (the person) take a hot piece of gold out of (a mixture of) well heated oil and butter

27 He whose fingers ends do not tremble and who does not become blistered is acquitted according to law as has been declared by Pītāmaha

28 Iron twelve Palas in weight should be formed into what is called a ploughshare. It should be eight Angulas long by four Angulas broad

21 Vīram p 271

22 Vīram p 276

23 Vīram p 280

24 Vīram p 281

25 Vīram p 282 The *Todārananda* attributes to *Brīhaspati* another text identical with *Nārada* I 25 342 (above p 119)

26 Vīram p 283

27 Vīram. p 284 The same text occurs in the *Nepalese Nārada*

28 29 Vīram p 285 Some texts relating to this kind of

29 (The ploughshare) having been made red hot in fire a thief should be made to lick at it once with his tongue. If he is not burnt he obtains acquittal. Otherwise he loses his cause.

30 (Images of) Dharma and Adharma one black and the other white should be painted on two leaves. Then they should be invoked with prayers producing life or others and with the Gayatri or other Samans.

31 And should be worshipped with perfumes and with white and black flowers sprinkled with the five products of a cow, and enclosed in balls made of earth afterwards.

32 After having been made equal in size they should be placed unobserved in a fresh jar. Then the person should take one ball out of the vessel at the bidding (of the judge).

33 If he takes out Dharma he is acquitted and should be honoured by the (appointed) examiners.

XI THE LAW OF DEBT

1 A creditor should never lend money without having first secured a pledge of adequate value or a

ordeal are found in the Nepalese Narada as well but they are very incorrectly given in the MS. The judge after having placed a ploughshare of the size stated in the text into a fire kindled for that purpose should perform the whole general rite of ordeal beginning with the invocation addressed to Dharma and ending with the fixing of a writing on the head of the person. Then after addressing the fire with the text previously quoted (of P'uramah)

Thou O Agni &c. and after causing the person to address the fire with the text previously quoted. Thou O Agni (thou) in all beings (Yâgñavalkya II 104) he should cause the person to lick (at the ploughshare) Vîram Smṛti

30-33 Vîram p 286 Prayers producing life such as e.g. Rig veda X, 5, 1 Vîram

XI 1 May p 102 Col. Dig I 1 11 The commentators agree

deposit, or a trustworthy surety nor without a bond written (by the debtor himself) or attested (by subscribing witnesses)

2 That (loan) is termed *kuśida* (a loan on interest) which is exacted by persons apprehending no sin (from the act) from a mean (*kutsita*) or wretched (*śīdat*) man after having been increased to four or eight times the original amount (through the interest accruing on it)

3 An eightieth part (of the principal) accrues as interest on it (every month), and it is certainly doubled by such interest within a third of a year less than seven years (that is to say, within six years and eight months)

4 Interest is declared (by some) to be of four

in explaining the term *ādhi* 'a pledge' as denoting a pledge to be used such as e.g. a cow to be used with her milk or landed property pledged together with its produce. The term *bandha*, 'a deposit' is supposed to denote a pledge which must not be used according to the *Mayūkhya* however it means a pledge which is not actually delivered to the creditor the debtor merely promising not to alienate it. 'A pledge of adequate value' is one corresponding in value to the principal together with the interest. *Vīram* p 293. The term *sākṣimat* attested is referred to a debt contracted orally before witnesses both by Colebrooke (*Dig* I, 1 11) and Mandlik (*May* loc cit). This however is opposed to the gloss of the *Vīramitrodaya*.

2 *May* p 102. *Col Dig* I 1 3. It is hardly necessary to point out that the etymology here proposed of the term *kuśida* a loan on interest is entirely fanciful. It is really derived from *ku* and *sida*, and denotes that which adheres closely and cannot easily be got rid of. The commentators explain the clause 'apprehending no sin' to imply that it is sinful otherwise to accept a gift from an unworthy person.

3 *Smṛiti*. *Col Dig* I ~ 26. *astubhāgo vardheta lābhe dvigu ratām iyāt | pravuktam saptabhir varshais tribhāgonair na sam sayāh ||*

4-8 *Vīram* pp 294 295. *Col Dig* I 2 35

sorts, by others it is stated to be fivefold and by others again it is said to be of six kinds. Learn their (various) qualities

5 Kâyikâ (bodily interest) kâlikâ (periodical interest) kakravṛddhi (compound interest) kârita (stipulated interest) sikhâvṛddhi (hair interest) and bhogalâbha (interest by enjoyment) such are the six kinds of interest

6 Kayikâ interest is connected with bodily labour kâlikâ is due every month kakravṛddhi is interest on interest kârita is interest promised by the borrower

7 8 When interest is received every day it is termed sikhâvṛddhi (hair interest because it grows every day) Because it grows constantly like hair and does not cease growing except on the loss of the head that is to say on payment of the principal therefore it is called hair interest. The use of a (mortgaged) house or the produce of a field is termed bhogalâbha (interest by enjoyment)

9 That kârita (stipulated) interest has to be paid always which has been stipulated by the debtor himself over and above (the ordinary rate of interest) and has been promised in times of distress

10 When (such special) interest has been stipulated in any other manner it must not be paid by any means

11 Hair interest bodily interest, and interest by

6 Bodily labour when the milk of a pledged cow or the strength of a pledged animal for draught or burden is used by the creditor being as it were the interest on his loan Vîram

9 10 Vîram p. 295 Col. Dig. I 2, 37 (Kâtyâyana)

10 'In any other manner' i.e. by the creditor Vîram

11 Vîram p. 301 Col. Dig. I 2 35

enjoyment shall be taken by the creditor so long as the principal remains unpaid

12 But the use of a pledge after twice the principal has been realised from it, compound interest, and the exaction of the principal and interest (together as principal) is usury and reprehensible

13 On gold (and other precious metals) the interest may make (the debt) double on clothes and base metals (such as tin or lead), treble on grain it is allowed to rise to four times the original amount and so on edible plants (or fruit) beasts of burden, and wool

14 It is allowed to make (the debt) quintuple on pot herbs sextuple, on seeds and sugar-cane and it may make (the debt) octuple on salt, oil and spirituous liquor

15 Likewise on sugar and honey, if the loan be of old standing

16 On grass wood bricks thread substances from which spirits may be extracted, leaves, bones leather weapons, flowers, and fruits, no interest is ordained

17 A pledge is termed bandha and is declared to

12 Viv p 12 Col Dig loc cit

13-16 Vīram. pp 298 300 Viv pp 17, 18 May p 104 Col. Dig I 2 63 67 69

13 The Vīramitrodaya reads *ĥarmāsthivarmanām* leather bones and armour

16 The commentators observe that no interest should be exacted unless there be a special agreement to the purpose There is however, another reading (*vṛddhis tu na nivartate*) under which the purport of this rule becomes quite different viz that there is absolutely no limit regarding the interest on the articles mentioned in it This version is in harmony with the corresponding regulations of other legislators.

17 Col Dig I, 3, 80 May p 105 Vīram p. 305

be of four sorts movable or immovable to be kept only or to be used, to be released at any time, or limited as to time, stated in writing or stipulated (orally) before witnesses

18 Should the creditor actuated by avarice use a pledge before interest has ceased to accrue on the loan (on becoming equal to the principal) or before the fixed period has expired such use shall be stopped

19 The pledge has to be kept carefully like a deposit interest is forfeited in case of its being damaged

20 A pledge having been used and rendered worthless (by such use), the principal (itself) is lost if a very valuable pledge be spoiled he must satisfy the pledger

21 If a pledge be destroyed by a fatal accident or by an act of the king, the debtor shall be caused either to deliver another pledge or to pay the debt.

22 When the debtor restores the principal and asks for his pledge it must be restored to him otherwise the creditor is liable to punishment

18 19 Col Dig I 3 92 Vîram p 306

20 Col Dig I 3 86 Vîram p 309 May p 105

21 Col Dig I 3 93 May p 105, Vîram p 309 This text has been translated according to the Vîramirodaya. Under the reading of the other compilations payment of the debt together with interest is enjoined. A king i.e. a ruler who offends against the dictates of religion Vîram

22 Col Dig I 3 103 Vîram p 319 The rule that the principal only needs to be restored concerns a pledge for use. In the case of a pledge for custody interest has to be paid besides the principal Vîram

23 When a field or other (immovable property) has been enjoyed and more than the principal realised by it then the debtor shall recover his pledge if the principal and interest has been actually got out of it (by the creditor)

24 (This law applies) when the debtor delivers a field to the creditor with the following stipulation

This (field) shall be enjoyed by you when interest has ceased (on becoming equal to the principal) that is certain When the principal has been realised together with the interest you shall restore (the field) to me

25 When the time (for payment) has passed and interest has ceased (on becoming equal to the principal), the creditor shall be owner of the pledge, but till ten days have elapsed, the debtor is entitled to redeem it

26 Notice having been given to the debtor's family a pledge to be kept (only) may be used, after the principal has been doubled and so may a pledge for a fixed period on the expiration of that term

27 When the principal has been doubled, or the stipulated period expired in the case of a pledge delivered for a certain time only the creditor

23 Col Dig I 3 108 May p 107

23 24 Viram. p 320 Under a stipulation of this sort the mortgagee shall recover his pledge as soon as the creditor has fully realised his demand out of the mortgage no matter whether he has contributed little or much himself towards its realisation Viram The Ratnakara (p 29) inserts the following text after 24 This lawful rule has been proclaimed with regard to loans on interest and so forth

25 Col. Dig I 3 115 Viram. p 316

26 Viram p 316, Col Dig I 3 119 (Smṛti)

27 28 Viram p 315 During that interval i e before the ten days have elapsed. Viram. These two texts are elsewhere

becomes owner of the pledge after having waited for a fortnight.

28 If the debtor should pay the debt during that interval he may recover his pledge (even then)

29 When the amount of the debt has been doubled (by the interest accruing on it) and the debtor is either dead or no longer present (the creditor) may take his chattel and sell it before witnesses

30 Or its value having been estimated in an assembly he may keep it for ten days after which having realised a sufficient sum to cover his demand, he should relinquish the balance

31 When a man neither enjoys a pledge nor obtains it (from the debtor) nor points it out (to others) his written contract (concerning the pledge) is invalid (just like) a document when the (subscribing) witnesses and debtor are dead

32 When a house or field has been mortgaged for use and the period (fixed for such use) has not expired the debtor cannot recover his property nor can the creditor (recover) his loan

33 When the (stipulated) period has elapsed both

attributed to Vyâsa This is probably the correct view as it is difficult to reconcile these texts either with the preceding or with the following ones

29 May p 106

29 30 Vîram p 316 Col Dig I 3 121 The chattel i.e. the pledged commodity A sufficient sum to cover his demand i.e. twice as much as the principal Vîram The balance should be handed over to the relatives of the debtor or to the king Colebrooke's Digest has another text after these two in which it is stated that the precise amount of the debt should be ascertained by persons skilled in computation

31 Col Dig I 3 126 Smṛiti Ratn p 35

32 33 V v p 25 Col Dig I, 3 105 118 In ordinary cases

parties are at liberty to do so. But, even before (the stipulated period) has elapsed they may make an arrangement by mutual consent

34 Where one field has been mortgaged to two creditors at the same time it shall belong to that mortgagee who was the first to obtain possession of it

35 If both have possessed it for an equal time it shall be held in common (or shared equally) by them. The same rule is ordained in the case of a gift or a sale

36 Which course should be adopted in cases of a competition between three different acts the identical property having been sold mortgaged and given away on one and the same day?

37 The three parties should divide that lawful property of theirs among themselves in proportionate shares the two first in the ratio of their respective claims whereas the donee ought to obtain a full third.

38 The pledgee can never be compelled to restore the pledge against his will, before the whole amount due to him has been paid nor must (the pledge be obtained from him) by deceit or by (the mode called) *Karita*

the recovery of the loan attended by the restoration of the pledge to the pledger takes place after the lapse of the stipulated period. By mutual consent however it may take place before that time

34 The term a field includes by implication any pledge for use
Vīram p 312 Other commentators add that possession must have been obtained without forcible means Col Dig I 3 132

35 Smṛtāṅk Col Dig I 3 133 Ratn p 37

36 37 Vīram p 314 (Vasishṭha) V T

38 Ratn p 27 Col Dig I 3 102 Regarding the mode called *Karita* or *Ākarita*, see below XI 58

39 For appearance for confidence for payment and for delivering the assets of the debtor it is for these four different purposes that sureties have been ordained by the sages in the system (of law)

40 The first says I will produce (that man), the second (says) He is a respectable man the third (says) I will pay the debt the fourth (says) I will deliver his assets

41 If the debtors fail in their engagements the two first (sureties themselves but not their sons) must pay the sum lent at the appointed time both the two last (sureties), and in default of them their sons (are liable for the debt), when the debtors break their promise (to pay the debt)

42 The creditor should allow time for the surety to search for a debtor who has absconded a fortnight a month a month and a half according to (the distance of) the place (where he is supposed to be hiding himself)

43 (Sureties) must not be excessively harassed they should be made to pay the debt by instalments,

39 Col Dig I 4 142 Viram p. 321, Viv p 27 The author of the last mentioned work reads *rīṇe dravyārpane* for *rīmudravyārpane* which reading he refers to as the traditional one and defines the fourth kind of surety to be one who vouches for the return of articles lent for use such as ornaments for a festival

40 May p 107 The first surety promises to produce a debtor who is likely to abscond the second vouches for the debtor's honesty declaring that he is a virtuous man who will not deceive the creditor, the third promises to pay the debt himself together with the interest if the debtor should fail to pay it the fourth promises to deliver his movable property such as household furniture in the same case

41 May p 107

42 43 Viram. pp 323 328 Col Dig I 4 148 Ratn p 40

they must not be attacked when the debtor is present such is the law regarding sureties

44. When (a surety) being harassed pays a proved debt which he has vouched for (the debtor) shall pay him twice as much after the lapse of a month and a half

45 Should foolish (sureties) in good faith pay the debt, though not required to do so or on being required to pay a different debt, how and from whom can they recover that sum ?

46 By whom to whom and how should or should not be paid a loan which has been received from the hands of another man in the shape of a loan on interest, will now be declared

47 A loan shall be restored on demand if no time has been fixed (for its restoration) or on the expiration of the time (if a definite period has been fixed) or when interest ceases (on becoming equal to the principal) If the father is no longer alive, (the debt must be paid) by his sons

48 The father's debt must be paid first of all and after that a man's own debt, but a debt contracted by the paternal grandfather must always be paid before these two even

49 The father's debt, on being proved must be paid by the sons as if it were their own, the grandfather's debt must be paid (by his son's sons) without

44 Viram p 328

45 Ratn p 46, Col Dig I 4 163

46 Ratn p 47 Col Dig I 5 166

47 Ratn p 47, Col Dig I 5 166 Vir p 32

48 Ratn p 47 Col Dig I, 5 167 May p 112

49 May p 112, Col Dig I 5 167 As if it were their own
L e with interest Ratn

interest but the son of a grandson need not pay it at all

50 When a debt has been incurred for the benefit of the household by an uncle brother son wife slave pupil or dependant it must be paid by the head of the family

51 Sons shall not be made to pay (a debt incurred by their father) for spirituous liquor for losses at play for idle gifts for promises made under the influence of love or wrath or for suretyship nor the balance of a fine or toll (liquidated in part by their father)

52 The liability for the debts devolves on the successor to the estate when the son is involved in calamity or on the taker of the widow in default of a successor to the estate

53 Debts contracted by the wives of distillers of spirituous liquor hunters washermen herdsmen barbers or the like persons shall be paid by their protector, they were contracted for the affairs of their husbands

54 When (a debtor) has acknowledged a debt it may be recovered from him by the expedients of friendly expostulation and the rest, by moral suasion

50 Ratn p 54 Col Dig I 5 189 Viv p 39

51 Ratn p 57 Col Dig I 5 201 May p 113 Regarding promises made under the influence of love or wrath see Kātyāyana X 53 54

52 Ratn p 64 Col Dig I 5 174 May p 114 Viv p 37

53 Vīram p 354 (Kātyāyana), Col Dig I 5 217 Ratn p 60 Protector means husband Ratn Barbers, nāpita, are referred to according to the reading of the Ratnākara The Vīramī trodaya reads nāvika sa lōrs which reading is mentioned as a varia lectio in the Ratnākara. Colebrooke has shepherds

54 Col Dig I 6 244 May p 109

by artful management by compulsion and by confinement at his house

55 When a debtor is caused to pay by the advice of friends or kinsmen by friendly remonstrances by constant following or by (the creditor) starving himself to death it is termed moral suasion

56 When a creditor with a crafty design borrows anything from his debtor for his own use or withholds an Anvâhita deposit or the like and thus enforces payment of the debt, it is termed artful management

57 When a debtor is fettered and conducted into (the creditor's) own house where he is compelled to pay the debt by beating or other (forcible) means it is called compulsion

58 When a debtor is made to pay by confining his wife son or cattle and by watching at his door it is termed Âkarita (the customary mode)

59 An indigent debtor may be taken to his own house by the creditor and compelled to do work there such as distilling spirits and the like but a Brahman must be made to pay gradually

55 Col Dig I 6 236 May p 109 Ratn p 67 Viv p 43
The term praya or prâypavesana corresponds without doubt to the modern custom of Dharza or fasting upon a debtor when the creditor places himself before the debtor's house and threatens to starve himself to death, unless the debt be paid. It is true that some commentators interpret praya by importunate demands (prârthanâbâhulya or prârthanâ)

56 Col Dig I 6 238 May p 109 &c 'With a crafty design as e.g. when valuable ornaments are borrowed from the debtor on the pretence of using them at a festivity. An Anvâhita deposit is an article deposited for delivery to another person. Vîram p 333

57 Col Dig I 6 240

58 Col Dig I 6 259

59 Ratn p 71 Col Dig I 6 246

60 When the time fixed (for payment) has elapsed and the interest has ceased (on becoming equal to the principal), the debtor may either recover his loan or cause a new bond to be written in the form of compound interest

61 As compound interest is taken on the doubled principal so does the use of a pledge (become a new principal) the debt together with the interest being considered as the (new) principal

62 This rule concerns an acknowledged (debt) but (a debtor) denying (his liability) shall be compelled to pay on the debt being proved in a (judicial) assembly by a document or by witnesses

63 (A debtor) claiming judicial investigation in a doubtful case shall never be put under restraint (by the creditor) He who puts under restraint one not liable to such treatment shall be fined according to law

64 A debtor who makes a declaration in his form What may be found to be justly due that I will pay is termed one claiming judicial investigation

65 When there is a difference of opinion between the two parties regarding the nature (of the loan) or the number or the like or the (amount of) interest

60 May p 110 Col Dig I 6 255 The new bond is to be one in which the interest is calculated on the interest added to the principal i.e. on the doubled principal

61 Ratn p 72 Col Dig I 6 259 The comparison here proposed relates to the case when a pledge for use has been accidentally destroyed and a new bond is executed in which the interest is calculated on the principal together with the lost usufruct

6 Ratn p 75 May p 110 Col Dig I 6 160

63 May p 110 Col Dig I 6 161

63-65 Ratn p 25 64 May p 110 Col Dig I 6 162

65 Col Dig I 6 163 The nature of the loan whether it be gold or silver &c. or the like such as the pledge given, &c. Ratn

or whether the sum be due or not it is termed a doubtful case

66 Should a man after recovering his debt by moral suasion or one of the other modes fail to receipt it on the bond or to give a deed of acquittance it shall yield interest (to the debtor)

XII DEPOSITS

1 The Law of Debt beginning with the delivery of a loan and ending with its recovery has been declared Hear now the complete set of rules concerning Deposits

2 When any chattel is deposited in the house of another man, through fear of the king robbers or other dangers or for the purpose of deceiving one's heirs it is called a Nyasa deposit

3 When a chattel enclosed in a cover and marked with a seal (is deposited) without describing its nature or quantity and without showing it it is termed an Aupanidhika deposit

4 Let a man make a deposit after duly considering the place house master of the house the power means qualities veracity and kindred (of the depository)

5 (A deposit) is declared to be of two sorts

66 Ratn p 80, Col Dig I 6 288 The term *vriddhi* interest is interpreted forfeiture by a certain number of commentators This erroneous interpretation has been adopted by Colebrooke Sir W Jones has the correct translation

XII 1 Ratn p 83 Col Dig II, 1 1

2 Ratn p 83 Col Dig II 1 6 Viram p 361

3 Ratn p 83 Col Dig II 1 7 (with several different readings)

4 Ratn p 85 Col Dig II 1 14

5-8 Ratn pp 85 86 Col Dig II, 1 19

attested, or deposited in private it must be guarded with the same care as a son, for it would be destroyed by neglect

6 The merit of one who preserves a deposit or one who places himself under his protection is equal to the merit of one who gives (articles made of) gold or of base metal or clothes

7 The sin of those who consume or spoil (by negligence) a bailed chattel is as great as (the sin) of a woman who injures her husband or of a man who kills his son or his friend

8 It is the best course not to accept a deposit but to destroy it (after having received it) is disgraceful after having taken it a man should keep it carefully and restore it when it has been asked for even once only

9 A deposit must be returned to the very man who bailed it in the very manner in which it was bailed it must not be delivered to the successor of that man

10 When a deposit is destroyed together with the goods of the depositary by the act of fate or of the king (the depositary) is not to blame

11 If the depositary should suffer the deposit to be destroyed by his want of care or indifference or should refuse to restore it on being asked for it he shall be made to pay (the value of) it with interest

6 9 May p. 115

7, 8 Col Dig II 1 19

9 Col Dig II 1 18 Viv p 51 Ratn p 8,

10 Ratn p 88 Col Dig II, 1 23 Vivam p 362, May p 116

11 Ratn. p 90 Col Dig II 1 34 May p 116 Viv p 53
The commentators take bheda, want of care to mean separation of the deposit from the depositary's own property, and bestowing less care on it than on the effects of the depositary

12 Should any (depository) procure advantage for himself by an article deposited (with him) he shall be fined by the king and compelled to pay its value together with interest

13 He who after receiving a deposit denies the fact, and is convicted by (the evidence of) witnesses or ordeal shall be compelled to give up the deposit and to pay an equal amount as a fine

14 When a dispute arises with regard to a deposit privately made the performance of an ordeal is ordained for both parties to establish the facts of the case

15 The same set of rules applies in the case of a bailment for delivery (to a third person) a loan for use an article delivered to an artist (such as gold delivered to a goldsmith to be worked by him into an earring) a pledge, and a person offering himself for protection

XIII SALE WITHOUT OWNERSHIP

1 Immediately after deposits sale by another person than the owner has been declared by Bhṛṅgu listen attentively I will expound that subject thoroughly

12 Ratn p 91, Col Dig II 1 31 The commentators observe that the use here referred to must have been made without the consent of the owner

13 Ratn p 93, Col Dig II 1 45

14 Ratn p 95 Vīram p 366 The term 'both parties' is used in order to imply that the ordeal may be performed either by the alleged depositor or depository Vīram

15 May p 116 Ratn p 96 Viv p 54

14, 15 Col Dig II 1 12

XIII 1 Ratn p 101 Col Dig II 2 1

2 An open deposit a bailment for delivery (Anvâhita) a Nyâsa (sealed) deposit stolen property a pledge or what has been borrowed for use when any one of these articles has been sold in secret by a man he is declared a person different from the owner (asvârin)

3 When the vendor has been produced and has been cast in the suit (the judge) shall cause him to pay the price and a fine to the buyer and king respectively and to restore the property to the owner

4 When the former owner comes forward and makes good his claim to the thing bought the vendor shall be produced (by the purchaser) by doing so the purchaser may clear himself

5 That greedy man who covets another man's property without having any claim to it shall be compelled to pay twice the value (of the property claimed) as a fine if he is unable to prove his claim

6 When there is no evidence in a suit the king shall consider the character of the parties and pass a decree himself according to the equal, greater, or less (credibility of the parties)

7 When a purchase has been made before an assembly of merchants, the king's officers being aware of it (also) but from a vendor whose habitation is unknown, or when the purchaser has deceased

8 The owner may recover his own property by

2 Ratn. p 101 Col Dig II 2 2 Vivam p 374

3 Ratn. p 102, Col Dig II 2 30 Viv p 57

4 Ratn. p 101 Col Dig II 2 33 Vivam p 379

5 Ratn p 106, Col. Dig II, 2, 46

6 Ratn. p 108 Col. Dig II, 2 52

7-9 Ratn p 109 Col Dig II 2 53 54

paying half the price (tendered) the custom in that case being that one half of the value is lost to each of the two

9 A purchase from an unknown (vendor) is one fault (in that case) want of care in keeping it is another these two faults are viewed by the wise as legitimate grounds of loss to each party

10 When a man purchases (a commodity) at a fair price and (the purchase) has been previously announced to the king there is no wrong about it but he who makes a fraudulent purchase is a thief

11 That should be known as a fraudulent purchase which is made at an unreasonably low price in the interior of a house outside of the village at night in secret or from a dishonest person

XIV CONCEPTS OF A PARTNERSHIP

1 Trade or other occupations should not be carried on by prudent men jointly with incompetent or lazy persons or with such as are afflicted by an illness ill fated or destitute

2 A man should carry on business jointly with persons of noble parentage clever active intelligent familiar with coins skilled in revenue and expenditure honest and enterprising

3 As an equal smaller or larger share (of the

10 11 Viv p 60 Vīram p 375 Col Dig II - 57 In 10 Colebrooke has delivered by the owner in the presence of credible persons I have translated the reading of the Vīramitrodaya previously announced to the king In 11 the clause 'in secret' is omitted in the Vīramitrodaya

XIV 1, 2 Ratn p 111 Col Dig II 3 2 Vīram pp 383 384

3 Ratn p 112 Col Dig II 3 5

joint stock) has been contributed by a partner in the same proportion shall he defray charges perform labour and obtain profit

4 Of those who lend (jointly) gold grain, liquids and condiments or the like the gain shall be equal to their respective shares (of the joint expenditure) whether equal more, or less

5 Whatever property one partner may give (or lend) authorized by many or whatever contract he may cause to be executed, all that is (considered as having been) done by all

6 They are themselves pronounced to be arbitrators and witnesses for one another in doubtful cases and when a fraudulent act has been discovered unless a (previous) feud should exist between them

7 When any one among them is found out to have practised deceit in a purchase or sale, he must be cleared by an oath (or ordeal), such is the rule in all disputes (of this sort)

8 When a loss or diminution has occurred through fate or the king it is ordained that it should be borne by all (partners) in proportion to their respective shares

9 When (a single partner acting) without the assent (of the other partners) or against their express instructions injures (their joint property)

4 Ratn p 123 Col Dig II 3 45

5-7 Ratn pp 123 113, Col Dig II 3 45, 9 10 May p 121 Viram p 385

8 Ratn p 113 Col Dig II 3 11 A loss destruction of the principal 'diminution loss of profits' Ratn

9 Ra.n. p 113 Col Dig II, 3 12 Viv p 61 Viram p 385-

through his negligence he must by himself give a compensation to all his partners

10 That (partner) on the other hand who by his own efforts preserves (the common stock) from a danger apprehended through fate or the king shall be allowed a tenth part of it (as a reward) the remainder being distributed among the other (partners) according to their shares (in the stock)

11 Should any such partner in trade happen to die through want of proper care, his goods must be shown (and delivered) to officers appointed by the king

12 And when any one comes forward claiming that man's property as heir (to the deceased partner) he shall prove his right to it by (the evidence of) other men and then let him take it

13 The king shall take a sixth a ninth, and a twelfth part respectively from the property of a Sûdra, Vaisya and Kshatriya, and a twentieth from the property of a Brahman

14 But after the lapse of three years if no owner should come forward by any means the king shall take that property, the wealth of a Brahman he shall bestow on (other) Brahmans

15 So among (several) persons jointly performing a ceremony if any one should meet with an accident his (part of) the ceremony shall be performed by a kinsman of his or by all his associates (in work)

10 Ratn p 114 Col Dig II 3 15 Viv p 61, Viram p 386

11 12 Ratn p 116 Col Dig II 3 21 Viv p 63

13 14 Ratn. p 116 Col Dig II, 3 22 Viv p 64

15 Ratn p 117 Col. Dig II 3 29 Viv p 65 A ceremony such as a sacrifice.

16 They (the officiating priests) are pronounced to be threefold coming (of their own accord), hereditary in the family and appointed by (the sacrificer) himself, their business should be performed by them accordingly

17 To a kinsman relative or friend one may lend money with a pledge (only) a loan to others must be guaranteed by a surety or there must be a written contract or witnesses

18 Gold or silver may be lent according to one's own choice liquids and condiments and grain for a specified period only, it is by local custom that both the loan and its recovery should be regulated

19 That however which has been lent by several persons in common must be recovered by them jointly, any (such lender) who fails to demand (the loan together with his partners) shall forfeit interest

20 The law regarding loans has been declared before, (therefore) it is referred to in an abridged form only in the present chapter Listen to the legal rules regarding cultivators of the soil and other (associates in work), which are declared as follows

21 Tillage should be undertaken by a sensible

16 Ratn p 120 Col Dig II 3 44 The analogous text of Nārada shows that officiating priests are the persons intended by this rule

17-26 Ra n pp 123 124 Col Dig II 3, 47-51

18 In a loan of gold a definite period for its return need not be specified but for liquids &c the stipulation of a fixed term is necessary Ratn.

20. Declared before, i e in Chapter XI All the rules declared in that chapter are equally applicable to loans made by an

ation

man jointly with those who are his equals in point of cattle workmen seeds, and the like, as well as implements of husbandry

22 They should refrain anxiously from cultivating an enclosed pasture ground land adjacent to a town or to the king's highway barren soil and ground infested by mice

23 That man will enjoy produce who sows fertile land, which has many holes and is wet capable of irrigation surrounded by fields on all sides, and cultivated in due season

24 A sensible cultivator must not admit cattle which is lean, very old tiny diseased, apt to run away blind of one eye or lame

25 When by the deficiency of one (partner) as to cattle or seeds a loss happens in (the produce of) the field, it must be made good by him to all the husbandmen

26 This primeval set of rules has been declared for cultivators of the soil

27 One able to work up gold, silver thread wood stone, or leather and acquainted with the articles to be manufactured (with such materials) is called Silpin (an artizan or artist) by the wise

28 When goldsmiths or other (artists) practise their art jointly they shall share the profits in due proportion, corresponding to the nature of their work

27, 28 Ratn p 124 Col Dig II 3 52 Viv p 70 Vīram p 396 Some compilations exhibit the readings kupya base metals for rūpya silver patra, leaves, for sūtra, 'thread tattatkalābhigñāñ acquainted with the minute particles of these materials, for ka phalabhigñāñ and acquainted with the articles to be man

29 The headman among a number of workmen jointly building a house or temple or digging a pool or making articles of leather is entitled to a double share (of the remuneration)

30 The same rule has been declared by virtuous men for musicians he who knows how to beat the time shall take a share and a half but the singers shall take equal shares

31 When anything has been brought from a hostile country by freebooters with the permission of their lord they shall give a sixth part to the king and share (the remainder) in due proportion

32 Four shares shall be awarded to their chief he who is (specially) valiant shall receive three shares, one (particularly) able shall take two and the remaining associates shall share alike

XV RESUMPTION OF GIFTS

1 The system of rules relative to Concerns of a Partnership has been fully declared thus the rules regarding what may or may not, be given, valid and invalid gifts, will be declared (next)

29 Ratn p 125 Col Dig II 3 54 May p 121 Viv p 70 Viram p 390 The last two words read vapı for vāpi and under this reading the clause or digging a pool would have to be omitted The Mayūkhya reads dhārmika sacred articles for karmika articles made of leather

30 Ratn p 125, Col Dig II 3 55 Viv p 71 Viram p 391 May p 121

31 32 Ratn p. 125, Col Dig II 3 56 Viv p 71 Viram p 391 'Their chief' i.e. one who exerts mind and body Ratn Viv

XV 1 Ratn p 127 Col Dig II 4 1 Viram p 392

2 That which may not be given is declared to be of eight sorts, joint property a son, a wife, a pledge, one's entire wealth a deposit what has been borrowed for use and what has been promised to another

3 What remains after defraying (the necessary expenses for) the food and clothing of his family may be given by a man, otherwise (by giving more than that) the religious merit (supposed to be acquired by the giver) though tasting like honey at first will change into poison in the end

4 When any field (or house) is given away belonging to a number of houses or fields acquired in one of the seven modes of (lawful) acquisition it is ordained to be viewed as a valid gift whether it have been inherited from the father or acquired by the donor himself

5 Self-acquired property may be given away at pleasure (by its owner) a pledge may be disposed of according to the rules of mortgage, in the case of property received as a marriage portion or inherited from an ancestor, the bestowal of the whole is not admitted

6 When however a marriage gift, or inherited property or what has been obtained by valour is

2 Ratn p 127 Col. Dig II 4 5 Viv p 72, Viram p 392

3 Ratn p 129 Viv p 75 Col Dig II 4 18

4 5 Viv p 76 The seven modes of acquisition are according to Manu (X 115) inheritance finding purchase conquest lending at interest doing work, and the acceptance of gifts from virtuous men The prohibition to give away the whole, in 5 relates to property acquired by valour as well according to the Ratnākara. The clause translated by bestowal of the whole may also mean, every gift i.e. a gift not sanctioned by the persons referred to in 6

4-7 Ratn p 130, Col. Dig II, 4 18

given with the assent of the wife kinsmen or supreme ruler the gift acquires validity

7 Co-heirs (or joint tenants) whether divided in interests or not have an equal claim to the immovable wealth, a single (paicener) has no power to give mortgage, or sell the whole (wealth)

8 The following eight sorts of gifts are recognised as valid by persons acquainted with the law of gift viz wages, (what was given) for the pleasure (of hearing bards or the like) the price of merchandise the fee paid for (or to) a damsel (and what was given) to a benefactor (as a return for his kindness) through reverence kindness or affection

9 What has been given by one angry or resenting an injury or through inadvertence or by one distressed by a minor a madman one terrified in intoxicated overaged cast out from society idiotic or afflicted with grief or an illness

10 Or what is given in jest all such gifts are declared to be void gifts

11 When anything has been given through desire of a reward or to an unworthy man mistaken for a worthy person or for an immoral purpose, the owner may resume the gift

XVI MASTER AND SERVANT

1 What may not be given and kindred subjects have been declared the law of servants shall be propounded next (There) the title of Breach of Promised Obedience is treated first

8 Ram p 133 Col Dig II 4 49 Viv p 81

9 10. Ratn p 136 Viv p 83 Col Dig II 4 62

11 Ratn p 136, Viv p 83 Col Dig II 4 62

XVI, 1 2 Ratn p 139 Col Dig III 1 1, Viv p 84

2 The titles of non payment of wages and then (of disputes) between the owner (of cattle) and his servants are to follow in due order Such are the three divisions of (the law of) servants

3 They are pronounced to be of many sorts according to their particular caste and occupation and fourfold, according as they serve for science, human knowledge (or skill), love or gain

4 Each of these is again divided (into several species) according to the difference of occupation

5 Science is declared to be a knowledge of (one of) the three Vedas called Rîg veda Sâma veda and Yagur veda for the purpose of acquiring such knowledge he should pay obedience to a spiritual teacher, as ordained in law

6 Arts (consisting of) work in gold base metals, and the like and the art of dancing and the rest are termed human knowledge, he who studies them should do work at his teacher's house

7 He who has intercourse with another man's female slave should be considered as a slave for the sake of his paramour he must do work for her master like another hired servant

8 The servant for gain (or pay) is declared to be of many sorts another is the servant for a share (of the gain) Of all, a low a middle and a high sort is distinguished

9 A servant engaged for a day a month half a month, a sixmonth two months, or a year, must do

3 4 Ratn p 140 Col Dig III 1 4 Viv p 84

5 Ratn p 140 Col Dig III 1 8 Viv p 86

6 Ratn p 141 Col Dig III 1 16 Viv p 86

7 Viv p 87 Col Dig III 1 32

8-11 Ratn. pp 142 143 Col Dig III 1, 24

the work which he promised to do and receives the stipulated fee

10 The warrior is the highest of these the cultivator of the soil is the middlemost the porter is declared to be the lowest and so is (a servant) employed in household work

11 A servant for a share of the gain is declared to be twofold either serving a husbandman or an owner of cattle he shall receive no doubt a share of the grain produced or of the milk

12 A third or a fifth (of the produce) shall be awarded to the cultivator of the soil as his share

13 Let that cultivator to whom food and clothing is given take a fifth of the crop and let him who serves in consideration of the profit (alone) take a third part of the grain produced

14 Should a hired servant fail in the performance of ever so small a part of his master's work he forfeits his wages and may be sued in court for his offence

15 When a servant does not perform his work after having received his wages though able (to do work) he shall be compelled to pay twice as much (as his wages) as a fine (to the king) and (shall restore) the wages (to his master)

16 He who has promised (to do work) and does not perform it shall be compelled to do so by forcible means even and if through obstinacy such a servant should still not do it as engaged for, he shall be fined

12 13 Ratn. pp 157 158 Col Dig III 1 66 67

14 15 Ratn p 159 Col Dig III 1 71

16 Ratn p 160 Col Dig III 1, 75 There is another reading, translated by Colebrooke under which the fine is to amount to two hundred *Panas* instead of eight *Krishnalas*

eight Kṛishṇalas and his wages shall not be paid to him

17 When a servant, commissioned by his master does any improper act (such as theft) for the benefit of his master the latter shall be held responsible for it

18 When a master does not pay wages for the labour stipulated after the work has been performed he shall be compelled by the king to pay it and a proportionate fine besides

19 (A man) hired for attendance on milch cows of another shall receive the whole milk every eighth day

20 (A cowherd) shall save cattle from danger of reptiles robbers, and tigers and from caverns or pits let him try his best to protect them, call out for help or give notice to his master

XVII VIOLATION OF AGREEMENTS

1 Thus has been declared the law concerning the mutual relations between master and servant learn now concisely the performance of agreements

2 Brahmins imbued with a knowledge of the Veda and of sacred lore, learned divines and persons keeping a sacrificial fire (the king) should worship establish them there (in his kingdom) and provide a maintenance for them

17 Ratn p 162, Col Dig III 1 84, Viv p 100

18 Ratn p 165 Col Dig III 1 93 Viv p 100

19 Viv p 105 Ratn p 170 Col Dig III 4 4

20 Ratn p 172 Viv p 106, Col Dig III 4 10

XVII 1-10 Ratn pp 177-179 Col Dig III 2 2 6

2-9 Vīram pp 4-3-427 The readings given in the Vīramī trodaya have been translated everywhere, except in 2 where the Ratnākara has been followed

3 Let him bestow on them houses and larded property exempt from taxation declaring in a written grant that the revenue is remitted

4 They shall perform for the citizens constant special and voluntary rites as well as expiatory and auspicious ones, and pass a decision in doubtful cases

5 A compact formed among villagers companies (of artisans), and associations is (called) an agreement such (an agreement) must be observed both in times of distress and for acts of piety

6 When a danger is apprehended from robbers or thieves it is (considered as) distress common to all in such a case (the danger) must be repelled by all not by one man alone whoever he may be

7 Mutual confidence having first been established by means of (the ordeal by) sacred libation by a stipulation in writing or by umpires, they shall then set about their work

8 Enemies, dissolute bashful indolent timid avaricious overaged or very young persons must not be chosen as intendants of affairs

9 Honest persons, acquainted with the Vedas and with duty able self-controlled sprung from noble families and skilled in every business, shall be appointed as heads (of an association)

10 Two three or five persons shall be appointed as advisers of the association their advice shall be taken by the villagers, companies (of artisans) corporations (of cohabitants) and other (fellowships)

11 When a stipulation has been entered in a

11-14 Ratn p 181 Col Dig III 2 14 Viram p 425 For kulāyanam in 13, the Viramitrodaya reads kulāyandairodnas ka and

document as follows The construction of a house of assembly, of a shed for (accommodating travellers with) water a temple a pool or a garden,

12 Relief to helpless or poor people the performance of sacrificial acts a common path or defence, shall be undertaken by us in proportionate shares that is a lawful agreement

13 (Such an agreement) must be kept by all He who fails (in his agreement) though able (to perform it) shall be punished by confiscation of his entire property, and by banishment from the town

14. And for that man whoever he may be who falls out (with his associates) or neglects (his work) a fine is ordained amounting to six Nishkas of four Suvarṇas each

15 He who injures the joint stock or insults a Brahman acquainted with the three Vedas or breaks the mutual agreement shall be banished from the town

16 An acrimonious or malicious man and one who causes dissension or does violent acts or who is inimically disposed towards that company association or the king, shall be banished instantly from the town

17 The heads of families, companies (of artizans) and associations whether inhabiting a town or a stronghold, shall censure and reprimand offenders and forsake them

interprets it by the maintenance of a family including its preservation in times of distress

15 Ratn. p 183 Col Dig III 2 19

16 Ratn p 184, Col Dig III 2 20, Vīram p 430

17 Ratn p 184 Col Dig III 2, 21, Vīram p 429 Viv
p 110

18 Whatever is done by those (heads of an association) whether harsh or kind towards other people must be approved of by the king as well for they are declared to be the appointed managers (of affairs)

19 Should they agree actuated by hatred on injuring a single member of the fellowship, the king must restrain them and they shall be punished if they persist in their conduct

20 When a dispute arises between the chiefs and the societies the king shall decide it and shall bring them back to their duty

21 Those (companions in trade) who conspire to cheat the king of the share due to him (of their profits), shall be compelled to pay eight times as much and shall be punished if they take to flight

22 Whatever is obtained then by a man shall belong to all in common whether it have been obtained a sixmonth or a month ago it shall be divided in due proportion

23 (Or) it shall be bestowed on the idiotic the aged the blind, to women or children, to afflicted or diseased persons to persons having issue or the like (worthy persons) This is an eternal law

24 Whatever is obtained or preserved by the members of a fellowship or spent on behalf of the

18 Ratn p 184 Col Dig III 2 22 Viram p 429

19 Ratn p 184, Col. Dig III 2 23 Viram p 429

20 Ratn p 184 Col Dig III 2 24

21 Ratn p 185 Col Dig III 2 27 Viv p 110

22 Ratn p 186, Col Dig III 2 30 Viv p 116 The commentators observe that gifts obtained from a king are mean

23, 24 Ratn. pp 186 187 Col Dig III 2 31 Viram p 432 For prakalpita in 24 what is spent the last two words read *manakṛita* what is borrowed.

society or acquired through the king's favour is common to all (members of the society)

XVIII RESCISSION OF PURCHASE AND SALE

1 This set of rules concerning the law of agreements has been briefly stated disputes arising from purchase and sale shall be treated next

2 Two sorts of property are distinguished immoveable and moveable when a purchase is concluded the term vendible property (*panya*) is applied to both

3 The purchaser shall examine a chattel himself and show it to others, when after examining and approving it he has accepted it he is not at liberty to return it again

4 The foolish man who sells an article though acquainted with its blemish shall have to pay twice its value (to the vendee), and (a fine of) the same amount (to the king)

5 What has been sold by one intoxicated or insane or at a very low price, or under the impulse of fear or by one not his own master or by an idiot, shall be relinquished (by the purchaser or it) may be recovered (from the purchaser) by forcible means

6 Within that period if a blemish should be

XVIII 1 2 Ratn p 189 Col Dig III 3 1

3 Vivam p 433 Col. Dig III, 3 11 Ratn p 198 Viv p 117

4 Vivam p 441 Ratn p 192 Col Dig III 3 31, Viv p 114

5 Vivam p 441 Ratn p. 193 Col Dig III 3 37 Thus according to some commentators others construe the clause at a very low price with each part of the sentence

6 Viv p 116, Col Dig III 3 14 May p 131 Within that period i.e. the period allowed for examination.

discovered anywhere in the commodity purchased it shall be returned to the vendor and the purchaser shall recover the price

XIX BOUNDARY DISPUTES

1 This rule regarding rescission of purchase and sale has been declared Hear the laws concerning boundaries of villages fields houses and so forth

2 The determination of boundaries should be settled at the time of foundation and it should be marked by visible and invisible signs so as to dispel doubt

3 Wells tanks pools large trees gardens temples mounds channels the course of a river reeds shrubs or piles of stones

4 By such visible signs as these a boundary line should always be caused to be marked also by other (marks) deposited underground which the earth is not likely to destroy

5 Dry cowdung bones chaff charcoal stones potsherds sand bricks cows tails cotton seeds, and ashes

6 After having placed these substances in vessels one should deposit them underground at the extremities of the boundary After that one should take care to point them out to youths and infants

7 These (youths and infants) should again show them to their own children after having grown old

XIX 1 Ratn p 201

2 Ratn p 202 Invisible signs are substances deposited underground

3 4 Viv p 120 Ratn p 203 Viram p 402

5 6 Ratn p 204 May p 134 Viram pp 402 453

7 Ratn p 204

by knowledge thus passing from one generation to the other, doubts regarding boundaries may be obviated

8 In disputes regarding a house or field the decision belongs to the neighbours as well as to the inhabitants of that town or village or to members of the same society and to the elders (of that district)

9 (Likewise to) husbandmen, artizans servants cowherds hunters, gleaners diggers of roots fisher men kinsmen mischief makers and robbers

10 After having been adjured by imprecations befitting their station they shall determine the boundary and shall indicate the marks deposited underground as evidence Such is the law

11 In default of witnesses and signs, even a single man agreeable to both parties may fix the boundary wearing a red garland of flowers and a red cloak putting earth on his head adhering to truth and having kept a fast

12 Neighbours born in that district though they be living abroad are termed natives of the place they should be consulted in the decision of a suit

13 What they should declare in a doubtful case as honest men and impartial to both parties shall be held decisive thus justice will not be violated

14. Those are witnesses in a suit of this kind who know the title of acquisition, the size the duration of the enjoyment the name and the characteristics of the land in question

8 9 Ratn p 209

10 Ratn. p 210 Vīram p 457

11 Vīram p 458 Ratn p 211 Viv p 122, May p 134

12 13 Ratn. p 213

14 Vīram p 453

15 The same rule holds good in all suits concerning immovable property. If their statements do not agree they shall be made to pay the highest fine.

16 Supposing a piece of land to have been taken from a village belonging to one man and given to another man either by a large river or by the king what should be decided in that case?

17 The land abandoned by a river or granted by the king belongs to him who receives it. Otherwise there would be no acquisition through fate or the king among men.

18 Loss and gain and life among men depend on the act of fate and of the king therefore in all affairs, what is effected by them must not be rescinded.

19 When a river has been fixed as the boundary line between two villages it shall never be removed on account of loss or gain arising (from that river to either village). He who removes it is liable to punishment.

20 The encroachment (of a river) on one side produces an increase of land elsewhere in banks of rivers that (increase) must not be taken from him (who gets it).

21 When land is carried away by the swift course

15 Viram p 457 Smṛit

16-23 Ratn pp 216 217, Viv pp 123 124 Viram pp 461 462 The second half of 19 is read as follows in the Viramirodaya (The river) effects gain or loss according as people are lucky or unlucky. This reading may have crept in from 16. For tauḷyâ I read kaḷyâ with Viram.

21 Such a tilled piece of land shall be made over to the previous owner till the harvest is over. When the harvest is over the previous rule (20) holds good. Viram

of a river overflowing a tilled piece of ground, the previous owner shall recover it.

22 When land is taken from one man by a king actuated by anger or avarice or using a fraudulent pretext, and bestowed on a different person as a mark of his favour, such a gift is not considered as valid

23 When (however) land is taken from a person enjoying it without a legitimate title of ownership and given to a worthier person (the latter) must not be deprived of it

24 A house, pool, shop or the like having been used by a man since the time of its foundation must not be taken from him, nor diminished or altered

25 A window, a watercourse a peg projecting from a wall (used to hang things upon) a shed (erected in a courtyard) a square of four buildings and a channel for the exit of water (after a rainfall) must not be blocked up when previously constructed

26 A privy, a fireplace a pit, or a receptacle for leavings of food and other (rubbish) must never be made very close to the house of another man

27 A passage by which men and animals go to and fro unprevented is called *Samsarana*, and must not be obstructed by any one

28 He who purposely crowds such a place (by carts and the like), or makes a pit or plants trees or voids excrements, shall pay a *Mashaka* as a fine

23 I read *vai dattâ*, with *Viram* for *vâdeya* or *vâdattâ* (*Ratn Viv*)

24 *Viv* p 124, *Viram* p 463 *Ratn.* p 219

25 *Viv* p 124 *Viram* p 463, *Ratn.* p 219

26 *Viv* p 125 *Viram* p 464 *Ratn* p 219 *May* p 135

27 *May* p 136 *Viv* p 125 *Ratn* p 220 *Viram* p 464

28 *Vi* p 465 *May* p 136

29 When a man has leased ground he shall sow and watch it and reap the harvest in due season. If he fails to do so he shall be compelled to make good the average value of the crop to the owner.

XX DEFAMATION

1 Injury (parushya) is declared to be of two kinds: harsh speeches and beating. Each of these two kinds is again divided into three species, and the punishment is pronounced to be thicefold.

2 Abuse of the first (or lowest) degree means offensive language against or defamation of, a country, village, family, or the like without (mentioning) an (individual ignominious) act.

3 Referring (in terms of contempt) to a man's sister or mother or charging him with a minor sin is termed abuse of a middling sort by the learned in law.

4 Charging a man with taking forbidden food or drinks or taxing him with a mortal sin or maliciously exposing his weakest points is termed abuse of the highest degree.

5 When two persons abuse each other their punishment shall be equal if they are equals in caste; if one is inferior to the other his punishment shall be double, for a superior half (of the ordinary punishment) is ordained.

29. Vi. p. 129. Ra'n. p. 229.

XX. 1. Ratn. p. 243. Viv. p. 138. The former work reads two species.

2-4. Ratn. pp. 243, 244, Viv. p. 138, May. p. 137, Viram. p. 483. Terms of contempt in 3 means filthy speeches, such as I shall visit your sister or mother.

5. Ratn. p. 245. Viram. p. 484.

6 When persons equal in caste and qualities abuse one another the punishment ordained for them in the system of law is thirteen *Panas* and a half

7 For a Brahman abusing a Kshatriya the fine shall be half of a hundred (fifty *Panas*) for abusing a Vaisya half of fifty (twenty five *Panas*) for abusing a Sûdra twelve and a half

8 This punishment has been declared for (abusing) a virtuous Sûdra who has committed no wrong no offence is imputable to a Brahman for abusing (a Sûdra) devoid of virtue

9 A Vaisya shall be fined a hundred (*Panas*) for reviling a Kshatriya a Kshatriya reviling a Vaisya shall have to pay half of that amount as a fine

10 In the case of a Kshatriya reviling a Sûdra the fine shall be twenty *Panas* in the case of a Vaisya the double amount is declared to be the proper fine by persons learned in law

11 A Sûdra shall be compelled to pay the first fine for abusing a Vaisya the middling fine (for abusing) a Kshatriya and the highest fine (for abusing) a Brahman

12 (A Sûdra) teaching the precepts of religion or uttering the words of the Veda or insulting a Brahman shall be punished by cutting out his tongue

13 (A man) reviling a sister or other (relation) of

6 Ratn p 247 Vîram p 483

7-11 Ratn pp 251, 252, Vîram p 480

7 May p 138

12 May p 138, Vîram p 486 Viv p 141 Ratn p 252

13 Ratn p 250 Vîram p 485 The latter work reads vipradikam a Brahman or other person for svasrâdikam, a sister or other relative

another person shall give a fine amounting to fifty Panas

14 He who reviles a person's native country or other (belongings of his), shall be fined twelve Panas and a half. He who through arrogance imputes an offence to him, shall be compelled to pay the first fine

15 This gradation of fines has been declared by me subject to modification by the sages in conformity with the (particular caste or qualities of a) man, so as either to remain as declared or to be reduced or raised

XXI ASSAULT

1 Injuring (a man) with a hand stone club or (throwing at him) ashes or mud or dust or (attacking him with) a weapon is termed assault

2 Throwing ashes or the like (at a man) or striking him with a hand or the like is (termed) an assault of the first degree the fine to be inflicted in that case shall amount to a Masha

3 This fine is ordained for (an assault on) equals in caste (for assaults) on another man's wife or on a superior it shall be twofold or threefold according to the sages according to the rank (of the person injured)

4 He who having been abused returns the abuse or having been beaten returns the blow or strikes an offender down, commits no wrong

14 15 Viram p 488 Ratn p 257

XXI 1 Ratn p 259

2 3 Ratn p 261 Viv p 144

4 May p 139 Viram p 472 Vv p 153 Ratn p 276

5 When a person throws gravel stones or pieces of wood at another the first (or lowest) fine shall be inflicted on him When they mutually strike one another with a hand or foot it shall amount to ten or twenty *Paṇas* respectively

6 The second fine shall be imposed when two persons in anger use weapons against one another when a wound has been inflicted the punishment shall be fixed by experts, corresponding to the severity of the hurt

7 For injuring (a person) with bricks stones or a wooden club (the fine shall be) two *Māshas*, the double fine shall be inflicted, according to the sages when blood flows

8 For tearing the skin, the first (or lowest) fine (shall be inflicted) for tearing the flesh the second fine, for breaking a bone the highest fine for killing capital punishment.

9 For breaking the ear nose or hand (of a person), or injuring his teeth, or feet the second fine shall be inflicted and double of that for entirely cutting off (any of those limbs)

10 He who injures a limb or divides it or cuts it off, shall be compelled to pay the expense of curing it and (he who forcibly took an article in a quarrel shall restore) his plunder

11 When a man has been beaten in a solitary place, or when no wound is seen, the offender shall

5 Ratn. p 263 Viv p 145 Vīram p 473

6 7 Vīram p 474 Viv p 147 Ratn p 264

8 9 Viv p 148

10 Viv p. 153, Ratn p. 270, Vīram. p 477

11 12 Ratn. p 273

be found out by circumstantial evidence or by an oath or ordeal

12 When he has been struck in the interior of a house or in a wood or at night and blood becomes visible one shall not examine witnesses

13 When two persons strike simultaneously, the punishment shall be equal for both the first aggressor and he who is a habitual mischief maker shall be compelled to pay a larger fine

14 When a low person offends a man in high position by harsh words or the like that man must not be persecuted by the king if he beats his aggressor

15 Persons begotten in the inverse order of castes and members of the lowest caste are called the refuse of society, should they insult a Brahman they shall be corporally punished and shall never be amerced in a fine

16 He who employs at an improper time for drawing or carrying tired or hungry or thirsty animals shall be compelled to atone for it in the same way as a cow killer, or to pay the first fine

XXII ROBBERY AND VIOLENCE

1 Homicide, theft, assault on another man's wife and the two kinds of injury (abuse and assault) are the four species of violence (Sāhasa)

2 Thieves are declared to be of two kinds open and concealed These are subdivided a thousand

13 Ratn p 275

14 Ratn p 276

15 Ratn p 277

16 Ratn p 280

XXII 1 May p 140

2 4. Ratn. p 289 Vīram. p 491

fold according to their skill, ability, and mode of cheating

3 (Fraudulent) traders quacks gamblers (corruptible) judges those who accept bribes cheats persons (pretending) to know how to interpret evil omens or to practise propitiatory rites low artists forgers,

4 (Hired servants) refusing to do their work (roguish) umpires perjured witnesses and, lastly, jugglers these are termed open thieves

5 Housebreakers, highwaymen robbers of bipeds or quadrupeds, thieves of clothes and the like and stealers of grain, should be considered secret thieves

6 (Thieves or robbers) having been found out by the king's attendants by their associating (with thieves) or by marks of their criminality or by their being possessed of stolen goods shall be compelled to restore their plunder, and shall be visited with punishments ordained in law

7 A merchant who conceals the blemish of an article which he is selling or mixes bad and good articles together, or sells (old articles) after repairing them shall be compelled to give the double quantity (to the purchaser) and to pay a fine equal (in amount) to the value of the article

8 A physician who though unacquainted with drugs and spells or ignorant of the nature of a disease yet takes money from the sick shall be punished like a thief

9 Gamblers playing with false dice, prostitutes

5 Ratn p 292

6 Viv p 157 Ratn p 293

7-15 Ratn pp 297 306-311 314 May p 142 Vīram p 492 Viv pp 159-165 The readings of the Ratnakara have been followed throughout in preference to those found in the other works.

those who appropriate what belongs to the king and those who cheat an association are pronounced to be impostors and punishable as such

10 Judges passing an unjust sentence those who live by taking bribes and those who disappoint confidence (placed in them) all such persons shall be banished

11 Those who without knowing the science of stars or portents expound them to the people from avarice shall be punished by all means

12 Those who show themselves in public wearing a staff a skin, and the like (insignia of a religious order), and injure mankind by deceiving them shall be corporally punished by the king's officers

13 Those who by artificially getting up articles of small value cause them to appear very valuable and deceive women or children (by doing so) shall be punished in proportion to their gain

14 Those who make false gold or factitious gems or coral shall be compelled to restore their price to the purchaser, and to pay the double amount to the king as a fine

15 Arbitrators who cheat either party from partiality, avarice or some other motive, and witnesses who give false evidence shall be compelled to pay twice the amount (in dispute) as a fine

16 Those who procure gain by means of spells or medicines (shall be compelled to give up) their gain those who practise incantations with roots shall be banished by the ruler of the land

17 Housebreakers shall be compelled to relinquish their plunder and be impaled on a stake after

10 Ratn. p 315

17 Ratn p 317 May p 143 Viram p 494, Viv p 166

wards and highwaymen shall be bound and hanged by the neck from a tree

18 Those who have kidnapped a man shall be burned by the king with a fire kept up with straw the stealer of a woman (shall be placed) on a bed of hot iron or burned with a fire kept up with straw

19 Stealers of grain shall be compelled to give ten times as much (to the owner) and the double amount as a fine, a cow stealer shall have his nose cut off, and shall be plunged into water after having been fettered

20 When a man takes grass wood flowers or fruit without asking permission to do so he deserves to have a hand cut off

21 On him who steals more than ten kumbhas of grain, corporal punishment (or execution) shall be inflicted, (for stealing) less than that a man shall be fined eleven times the quantity stolen and shall restore his property to the owner

22 When a religious man and diligent reader of the Veda has committed theft, he shall be kept in prison for a long time and shall be caused to perform a penance after having been compelled to restore the stolen goods to the owner

23 Hear now (the law regarding) theft coupled with violence, which springs from either wrath or avarice

18 Ratn p 317, Viv p 166

19 Ratn p 322 Viram p 494, May p 143

20 Ratn p 329 Viv p 174

21 Viv p 169

22 Ratn p 331 Viv p 176 Under the version found in the latter work the punishment does not take place when the Brahman performs a penance

23 Viram p 503

24 It is declared to be threefold as it may be (theft or violence) of the lowest second or highest kind the punishment in each case should also be of the lowest middling or highest sort according to the (nature of the) article (stolen or injured)

25 He who destroys or takes implements of husbandry an embankment flowers roots, or fruit shall be fined a hundred (Panas) or more according (to the nature of his offence)

26 So one injuring or stealing cattle clothes food drinks, or household utensils shall be compelled to pay a fine of not less than two hundred (Panas), like a thief

27 In the case of women men gold gems the property of a deity or Brahman silk and (other) precious things the fine shall be equal to the value (of the article stolen)

28 Or the double amount shall be inflicted by the king as a fine or the thief shall be executed to prevent a repetition (of the offence)

29 Violence is declared to be of five sorts and of these manslaughter is declared to be the worst those who have perpetrated it, shall not be amerced in a fine they shall be put to death by all means

30 Both notorious murderers and secret assassins shall be put to death by the king by various modes of execution after their property has been duly seized

31 When several persons in a passion beat a single individual (and kill him), the responsibility

24-28 Ratn p 350 May p 147

29 30 Ratn p 371 Viv p 192

30 May p 145, Vivam p 501

31-33 Ratn p 373, Viv p 194

for his death shall be charged to him who strikes the fatal blow

32 He who struck the fatal blow shall have to atone for his offence as directed the first aggressor and the associates shall be punished half as much

33 The decision should be given after carefully ascertaining by signs the less or greater severity of a wound the seat of vital power the strength (of the murdered individual), and the repetition (of the blows or cuts)

34 Where the corpse is found but the murderer cannot be discovered the king shall trace him by drawing an inference from previous enmities of his

35 His immediate neighbours and their neighbours as well as his friends enemies and relatives, shall be questioned by the king's officers, employing towards them the (four) expedients of conciliation and so forth

36 The (guilty) person may be found out from his keeping bad company from signs (of the crime committed) and from the possession of stolen property Thus has been declared the method of discovering murderers and robbers

37 He who has been arrested on suspicion and does not confess his guilt, shall clear himself (from suspicion) by ordeal, this rule holds good for causes of every sort

38 He who has been cleared of guilt by ordeal shall be released, he who has been convicted shall be put to death By punishment (of the wicked)

34-36 Ratn p 377, Viv p 197 (the better version)

35 The three other expedients are bribery intimidation and violence

37 38 Ratn pp 377 378 V v p 198

and release (of the virtuous) the renown and religious merit of a king is increased

XXIII ADULTERY

1 The two kinds of injury (abuse and assault) and the three kinds of violence have been declared Learn the threefold (offence of) adultery which is productive of sin

2 The two first kinds of it are connected with violence and deception respectively the third kind springs from sensual desire the last is again of three sorts being of the first second or highest degree

3 When a man has intercourse with a woman in secret against her will when she is asleep or disordered in her intellect or does not notice his approach it is (termed) forcible enjoyment of a woman

4 When he conducts her into his house under false pretences, and after giving her intoxicating drugs, has intercourse with her, it is considered fraudulent enjoyment of a woman

5 When a man exchanges looks with a woman or sends her messages, and has intercourse with her impelled by sensuality it has to be considered as (adulterous intercourse) springing from sensual desire

6 Winking (at a woman) smiling (at her) sending her messengers and touching her ornaments or clothes, is termed an adulterous act of the first (or lowest) degree

7 Sending perfumes, garlands, fruit spirituous liquor, food or clothes and conversing with her in

secret is considered an adulterous act of the second degree

8 Sitting on the same bed dallying and kissing or embracing each other is defined as an adulterous act of the highest degree by persons acquainted with law

9 For these three gradations of adultery the first middling and highest fines shall be inflicted respectively the fine shall be even higher than that, in the case of a very rich man

10 (The king) shall confiscate the whole wealth of him who violates an unwilling woman and having caused his penis and scrotum to be cut off shall cause him to be paraded on an ass

11 When a man enjoys a woman by fraud his punishment shall be confiscation of his entire wealth and he shall afterwards be branded with the mark of a female part and banished from the town

12 The highest fine (shall be inflicted for connexion) with a woman of equal caste half of that (for connexion) with a woman of inferior caste but a man who has connexion with a woman of higher caste than his own shall be put to death

13 When a woman has been enjoyed against her

9 Ratn p 384 Viram p 506 Viv p 202 May p 149 The Mayûkha as printed reads this text differently but one MS of it agrees with the other compilations

10 Ratn p 388, Viv p 212, May p 148

11 12 Ratn p 389 Viv p 213 May p 149 The reading of the Mayûkha seems to be wrong This rule (12) is declared to apply to those cases where force or deception has not been used Ratn Viv

11 Viram p 506

13 14 Ratn p 400 For the *Krikâhira* (Prâgâpatya) and Paraka penances see Manu XI 21 216

will she shall be kept in the house well guarded smeared (with ashes) lying on a low couch and receiving a bare maintenance only

14 To atone for her sin she shall be caused to perform the *Krikkhra* or *Parâka* penance in case she had intercourse with her equal in caste but if she has been enjoyed by a man of inferior caste she shall be abandoned and put to death.

15 When a woman comes to a man's house and excites his concupiscence by touching him or the like acts she shall be punished half of her punishment shall be inflicted on the man

16 Her nose lips and ears having been cut off she shall be paraded in the streets and plunged into water or she shall be torn to pieces by dogs in a public place frequented by many persons

XXIV DUTIES OF MAN AND WIFE

1 The whole set of commandments concerning adultery has thus been stated listen to me proclaiming the conduct prescribed for man and wife

2 A woman must be restrained from slight transgressions even by her relations by night and by day she must be watched by her mother-in-law and other wives belonging to the family

3 A father who does not give his daughter in

15 *Vîram* p 513 *Viv* p -17

16 *Viv* p 217

XXIV 1 *Ratn* p 409 *Col Dig IV* 1 1

2 *Ratn* p 411 *Col Dig IV* 1 12

3 *Ratn* p 412 *Col Dig IV* 1 13 *Viv* p 220 Regarding the time favourable for procreation see *Manu III* 46

marriage in proper time (before she has reached maturity) a husband who has not connexion with his wife at the time favourable for procreation and a son who does not support his mother all such deserve contempt and shall be punished as ordained in law

4 Employing (a woman) in the receipt and expenditure (of wealth) in the preparation of food in the preservation of domestic utensils in purification, and in the care of the (sacred household) fire is declared to be the (best) way of guarding women

5 Let not a woman reside in another man's house separated from her father husband or sons by (giving way to) malicious propensities particularly she is sure to lose her reputation

6 Rising before (the others), paying reverence to the elders of the family preparing food and condiments and using a low seat and bed thus have the duties of women been declared

7 Drinking (spirituous liquor) rambling abroad sleeping by day, and neglect of her daily duties are faults disgracing a woman

8 That wife is declared to be devoted to her husband who is afflicted when he is afflicted, pleased when he is happy squalid and languid when he is absent and who dies when he dies

9 While her husband is absent a woman must avoid decorating herself as well as dancing, singing,

4 Ratn p 416 Col Dig IV 1, 31 Vīram p 419

5 Ratn p 427

6 Ratn p 428, Col Dig IV 2 90

7 Ratn p 431, Col Dig IV 2 100

8 Ratn p 436 Col Dig IV 2 107 See 11

9 Ratn p 439 Col Dig IV 2 118

looking on at public spectacles or festivals and using meat or intoxicating drinks

10 A wife practising religious austerities fasting and preserving her chastity self controlled and liberal always goes to heaven even though she have no son

11 A wife is considered half the body (of her husband) equally sharing the result of his good or wicked deeds whether she ascends the pile after him or chooses to survive him leading a virtuous life she promotes the welfare of her husband

12 The Niyoga (appointment of a widow to raise offspring to her deceased lord) has been declared by Manu and again prohibited by the same on account of the successive deterioration of the (four) ages of the world it must not be practised by mortals (in the present age) according to law

13 In the ages Kr̥ta Tretā and Dvāpara men were imbued with devotion and sacred knowledge in the (present or) Kali age a decrease of its power has been ordained for the human race

14 The various sons who were appointed by ancient sages cannot be adopted now by men of the present age as they are destitute of power

XXV THE LAW OF INHERITANCE

1 After the death of both parents division of the property among brothers has been ordained (to take

10 Ratn p 443 Col Dig IV 3 138

11 Ratn p 442 Col Dig IV 3 132 It appears from these texts that Br̥haspati advocates the custom of Sati (self immolation of the widow) as an optional rite only in common with Viṣṇu and other Indian legislators and jurists.

12-14 Ratn. pp 449 450 Col Dig V 4 279 and IV 4 157 See Manu I 81-86 IX 56-70

XXV 1 Col Dig V 2 99 115 D II 1 May 1 39 V p 46

place) It may take place even in their lifetime if the mother be past child bearing

2 Houses and landed property inherited from an ancestor shall be shared equally by the father and sons but the sons cannot claim a share of their father's own property without the consent of the father

3 Of property acquired by the grandfather whether immovable or movable father and son are declared to be entitled to equal shares

4 Those (sons) for whom their shares have been arranged by the father, whether equal less or greater, must be compelled to abide by such arrangement Otherwise (if they try to alter the arrangement) they shall be punished

5 When a partition is made during (the father's) life the father shall reserve a couple of shares for himself

6 The worship of the Manes gods and Brahmans by those residing (together) and cooking their food (in one house) is single But when they divide the

Ratn p 462 The author of the *Dâyabhāga* and other writers of the Bengal school hold that this rule applies to ancestral wealth only and that moreover the consent of the father is required in every division of his property during his lifetime In the other schools of law this text is given its plain meaning

2 Col Dig V 2 94 (Vyāsa) May p 39 The *Mayūkhā* deduces from this text the doctrine generally held by the followers of the *Mitākshara* that partition of property inherited from a grandfather or more remote ancestor may be instituted by sons even against their father's wish

3 Col Dig V, 2 93, D II 50 V p 66 May p 43

4 Col Dig V 1 31 D II 75 V p 56 Ratn p 468

5 Col Dig V 2 97 D II 46 Ratn p 465

6 V pp 53 257, Ratn p 459 Viv p 227 Col Dig V 6

property, (the worship) takes place separately in each house

7 Partition among coparceners is declared to be of two kinds one is with attention to priority of birth, the other consists of the allotment of equal shares

8 All sons of the twice-born, begotten on women equal in caste (to their husbands), shall take equal shares, after giving a preferential share to the eldest

9 He who is the first by birth sacred knowledge or good qualities shall take a couple of shares out of the partible wealth and the rest shall take equal shares but he stands to them in the relation of a father as it were

10 When they divide their father's heritage all the sons shall share alike but he who is distinguished by sacred knowledge and virtue shall obtain a greater share (than the rest)

11 They are parents in the true sense of the term who have a son whose fame is spread in the world for sacred knowledge cleverness valour, wealth, and for knowledge liberality, and pious acts

12 In property belonging to the grandfather which had been taken away and has been (afterwards) recovered by the father through his own

1 Col Dig V 1 30 D II, 80

8 Col Dig V 1 53 D II 42

9 Col Dig V 1 40 D II 42 V p 67 Viv p 235

10 Col Dig V 1, 67, V 3 116

11 Col Dig V 3 116 Ratn p 484

12 13 Col Dig V 2 90 D V 1 2 34 V p 126 May p 40 Ratn p 461 Some computations read bhāgam withhold it from partition, for bhogam consume it

ability as well as in property acquired by sacred knowledge valour in arms &c the father's ownership has been declared

13 He may make a gift out of that property or even consume it at his will But in his default his sons are pronounced to be equal sharers

14 Whatever has been acquired by all together in that property they all have equal shares Their sons, whether unequal or equal (in number), are declared (to be) heirs of the shares of their (respective) fathers

15 When there are many sons sprung from one father equal in caste and number but born of different mothers a legal division (of the property) may be effected by adjusting the shares according to the mothers

16 (When there are several brothers) equal in caste but varying in number (of sons begotten with each wife) a division according to males is ordained

17 When step brothers born of different mothers or uterine brothers have come to a division with their father afterborn brothers shall take their father's share

18 A son born before (partition) has no claim to the paternal wealth nor (can) a brother's wealth (be claimed by) one born after partition

19 Whatever has been acquired with his own

14 Ratn p 481 Aparārka.

15 Col Dig V 1 62 D III 1 12 Mav p 46 V p 76
Ratn p 975

16 Col Dig V 1 63 May p 46 V p 76

17 18 Col Dig V 2 100 D VII 5 V p 93 Ratn p 538

18 M I 6 4 V p 219

19 M I 6 6 Col Dig V 7 392

effort by a father who has come to a partition with his sons all that belongs to the son born after partition Those born before it are declared to have no right

20 In regard to the property as well as regards debts gifts pledges and purchases, they are independent of each other, excepting impurity (caused by a death) and offerings consisting of water libations

21 Should there be younger brothers whose initiation has not been performed they must be initiated by the other brothers (the expense being defrayed) out of the family property (inherited) from the father

22 Whether partition has or has not been made whenever an heir comes forward he shall receive a share of such wealth as he can prove to be the joint property (of the family)

23 Whether it be a debt, or a document or house or field which has been inherited from the paternal grandfather, he shall take his proper share of it when he returns after a protracted absence even

24 When a man has gone abroad, leaving the joint estate of his family, his share must undoubtedly be given to his descendant who has returned from abroad

25 Whether he be the third or the fifth or even the seventh in descent he shall receive the share belonging to him by right of succession, his

19 20 Ratn p 539 May p 47 D VII 6 V pp 93 19

21 Col Dig V 3 132, May p 48 V p 86 Viv p 277

22-26 Col Dig V 7 394 D VIII 1-3 Ratn p 540

24-26 Viv p 241

25 May p 46

birth and family name having been ascertained (first)

26 He whom indigenous inhabitants and neighbours know to be the (legal) owner, to the descendants of that man must the land be surrendered by his kinsmen when they make their appearance

27 Let Brahmans Kshatriyas, Vaisyas and Sudras begotten in order by a Brahman take four three two shares and one share in succession

28 Let those begotten by a Kshatriya (take) three shares, two shares, and one share (respectively) Let those begotten by a Vaisya take two shares and one share

29 The son by a Kshatriya wife if elder by birth and endowed with superior qualities, shall take an equal share with the Brahman (son), and so shall a son by a Vaisya wife (share equally) with a Kshatriya son

30 Land obtained by acceptance of a gift must never be given to the son of a Kshatriya woman or other (wife inferior in caste to her husband) Though their father may have given it to them, the son by a Brahman wife shall take it after the death (of the father)

31 An obedient and excellent son of a man having no other male issue shall receive a maintenance (though he be born) of a Sudra woman, let the Sapindas take the remainder

27 Uggvalâ, p 79, Varadarâga, p 19

28 Varadarâga, p 19

29 Col Dig V 3 156 D IX 15 V p 98

30 Col. Dig V 3 161, D IX, 19, M I 4 36 I 8 8 May p 46 V p 99 Viv p 272

31 Col Dig V 3 168 D IX 28 Viv p 274 May p 47

32 A son begotten with a Sûdra woman by a twice born man is not entitled to a share of the landed property one begotten with a woman of equal caste shall take all Thus has the law been settled

33 Of the thirteen sons mentioned in succession by Manu the legitimate son of the body (Aurasa) and the appointed daughter (Putrikâ) continue the family

34 As in default of ghee oil is admitted by the virtuous as a substitute (at sacrifices) so are the eleven sons (admitted as substitutes) in default of a legitimate son of the body and of an appointed daughter

35 No one but a legitimate son of the body is declared to be heir of his father's wealth An appointed daughter is said to be equal to him All the others are stated to have a claim to maintenance (only)

36 Because a son (Putra) saves his father from the hell called Put by the very sight of his face, therefore should a man be anxious to beget a son

37 Both a son's son and the son of an appointed daughter cause a man to attain heaven Both are pronounced to be equal as regards their right of inheritance and the duty of offering funeral balls of meal (Pindas)

32 Col Dig V 3 164 V p 99 Ratn p 534 The Ratnākara after this text inserts two other texts on the right of a Vishada son which are elsewhere attributed to Devala

33 34 V p 120 See Manu IX 126 158-160

35 Col Dig V 4 215 Viv p 285, V p 11

36 Col Dig V 4 304 punnâmpo narakât putra/ putaram trâyate yata/ mukhasamdarśanēnapi tadutpattau yateta sa/ ||

37 Col Dig V 4 304, Uggvala, p 80

38 Gautama has declared that a daughter is appointed after performing a sacrifice to Agni and Pragâpati others have said that she is an appointed daughter (Putrikâ) who was merely supposed to be one (before her birth) by a man having no male issue

39 The other sons beginning with the son begotten on a wife (Kshetrâga) shall (respectively) take a fifth a sixth and a seventh part

40 The son given, the son cast off the son bought, the son made (or adopted) the son by a Sûdra wife these when pure by caste and irreproachable as to their conduct are considered sons of middle rank

41 The son begotten on a wife (Kshetrâga) is despised by the virtuous and so are the son begotten on a woman twice married the son of an unmarried damsel the son received with the wife and the son secretly born

42 Though born of a wife of the same caste a son destitute of good qualities is unworthy to obtain the paternal wealth it shall go to those learned (kinsmen) who offer the funeral ball of meal (Pinda) for the father

43 A son redeems his father from the highest

38 Col Dig V 4 225 Ratn p 562 See Gautama XXVIII 18

39 Col Dig V 4 246 Ratn p 545, V p 125 The Viramî trodaya reads samabhâgnaḥ for sapta bhâgnaḥ The other five or six sons beginning with the wife's son are equal sharers Regarding the wife's son (Kshetrâga) see Manu IX 167 Brîhaspati XXIV 12-14

40 41 Col Dig V 4 202, V p 128 Ratn p 552

42 43 May p 101

42-45 Col Dig V 4 264 V 319 D V 4 V p 256 Viv p 242

and lowest debts consequently there is no use of him who acts otherwise

44 What can be done with a cow which neither gives milk nor is (ever) pregnant? What is the good of a son being born who is neither learned nor virtuous?

45 A son who is destitute of learning valour and wealth void of devotion and insight and unobservant of good custom such a son is declared to be no better than urine and fæces

46 In the revealed texts (of the Veda) in the traditional law (of the Smṛtis) and in popular usage the wife is declared to be half the body (of her husband) equally sharing the outcome of good and evil acts

47 Of him whose wife is not dead, half his body survives How should any one else take the property while half (his) body lives?

48 Although kinsmen (Sakulyas) although his father and mother although uterine brothers be living the wife of him who dies without leaving male issue shall succeed to his snare

49 A wife deceased before (her husband) takes away his consecrated fire (Agnihotra) but if the husband dies before the wife she takes his property if she has been faithful to him This is a eternal law

50 After having received all the movable and immovable property the gold base metals and grain liquids and wearing apparel, she shall cause

46 See XXIV 11

46-52 Col Dig V 8 399 V 8 416 D XI 1 Ratn p 589

46-49 V pp 141 142

41 M II 1 6

48-52 V v pp. 289 290.

his monthly, sixmonthly, and annual Srâddhas to be performed

51 Let her propitiate with funeral oblations and pious liberality her husband's paternal uncles Gurus daughters sons sister's sons and maternal uncles also aged or helpless persons guests and women (belonging to the family)

52 Should agnates (*Sapindas*) or cognates (*Bândhavas*) or enemies injure the property let the king inflict on them the punishment destined for a thief

53 The husband being separated (in interests from his former coparceners) his wife shall take after his death a pledge and whatever else is recognised as property excepting the immovable wealth

54 A wife though preserving her character and though partition have been made is unworthy to obtain immovable property Food or a portion of the arable land shall be given to her at will (for her support)

55 The wife is declared to succeed to her husband's property and in her default the daughter

56 A daughter like a son, springs from each member of a man how then should any other mortal inherit the father's property while she lives?

57 Equal in caste (to her father) and married to a man of the same caste as her own, virtuous habitually submissive she shall inherit her father's property whether she may have been (expressly) appointed or not

53, 54 May p 77 V pp 134 135 173

55 56 M II 2 2 *Smṛiti* (K Iyer's translation) XI 2 113

56-58 Col Dig V 4 224 D XI 2 8 17 V pp 176 180
183 V v pp 292-294 56 57 Ratn 1 591

58 As her father's wealth becomes her property though kinsmen be in existence even so her son becomes the owner of his mother's and maternal grandfather's wealth

59 In default of them uterine brothers or brother's sons agnates (Sakulyas) and cognates (Bandhavas) pupils, or learned Brahmans are entitled to the inheritance

60 When a man dies leaving no issue nor wife nor brother nor father nor mother all his Sapindas shall divide his property in due shares

61 Half the entire wealth however shall first be set apart for the benefit of the deceased (owner) and carefully assigned for his monthly sixmonthly and annual Śrāddhas

62 When there are several relatives agnates (Sakulyas) and cognates (Bandhavas) whosoever of them is the nearest shall take the wealth of him who died leaving no issue

63 When a man dies without leaving either wife or male issue, the mother has to be considered as her son's heiress or a brother (may succeed) if she consents to it

64 But on his death the mother shall take a son's share The mothers shall share equally with the sons the maidens shall take fourth part shares

59 Col Dig V 8 422 D XI 2, 26 In default of them
1 e of a daughter or daughter's son

59-62 Col Dg V 8 437, Ratn p 595

60 V p 216

61 D XI 6 13

62 V p 194 May p 81

63 Col Dig V 8 4 3 V p 191 V 11 p 293 D XI 3 2

64 Col Dig V 2 85 V pp 81 84 &c On his death, 1 e
on the father's death. For tanayamsasamāmsini shall take a
son's share the Viramitrociya reads tanayā va samāmsini or the

65 66 To a father the funeral ball (*Pinda*) and water oblation shall be offered by his son in default of a son the widow (succeeds) in her default a uterine brother in default of him the co heirs (*dâyadâh*) afterwards the property goes to the daughter's son

67 Should a Kshatriya Vaisya or Sûdra die without leaving male issue or wife or brother their property shall be taken (as escheat) by the king for he is the lord of all

68 Except in the case of a Brahman but a king bent on the practice of virtue must allot a maintenance to his women Thus has the law of inheritance been declared

69 For her food (he must assign) a Prastha of rice every afternoon together with fuel and one dress purchased for three Panas must be given to her every three months

70 What is left after setting apart property suffi

daughter shall take an equal share *Vaṭaspatimūṣra* Kamalakara Nandapandita and other commentators explain the term *mātaraḥ* mothers as denoting step mothers who have no issue whereas in the first clause the term mother (*ganani*) according to them denotes a woman who has male issue It seems more natural however to interpret the term mother in the same way in both clauses *Viṣṇu* (XVIII 34 35) has the analogous precept that mothers and maiden daughters shall receive shares corresponding to the shares of sons *Viṣṇu*'s rule relates to a division of property among sons differing in caste and the present text of *Brīhaspati* seems to apply to the same case

65 66 *Aparārka Smṛiti* XI 4 19 (Iyer) These texts are quoted in some works only and it is certainly difficult to reconcile them with the other texts of *Brīhaspati* on inheritance

67 Col Dig V 8, 446 D XI 1 49, May p 83, Viv p 298

68-71 Nandapandita's *Vaigyanī Uggvalā*, p 82, Gautamīyā *Muktāṣharā*. The reading in 71 is uncertain.

cient for the expense of her dress food and for the washerman shall be made over to the co heirs

71 (The widow) shall recite the Dhûmâvasanika prayer in the evening bathe frequently and pay no regard to dwelling food or clothing after her husband's death

72 He who (having been divided) is again living through affection together with his father or brother or with his uncle even is said to be reunited with them

73 When brothers formerly divided are again living together through affection and arrange a second division the right of primogeniture does not accrue in that case

74 When any one (brother) should die or anyhow renounce worldly interests his share is not lost it is allotted to his uterine brother

75 If there be a sister she is entitled to a share of his property This is the law regarding (the wealth of) one destitute of issue and who has no wife or father

76 When two (coparceners) have again established together they shall mutually inherit their property

77 If among reunited coparceners any one should acquire property through learning, valour or other (independent effort of his own) a double share must be given to him, the rest shall take equal shares

78 Whatever has been given by the paternal

72 Col Dig V 8 430 M II 9 3 May p 84 V pp 40
162 205 Viv p 300 D XI 1 30 XII 3 Ratn p 605

73-75 Col Dig V 8 40, Viv p 302 V p 159

76 May p 88 Viv p 305 Ratn p 602

77 Col Dig V, 8, 460 V p 205 May p 85 Viv p 302

78 May p 69 Smṛitîk (Iyer) VII 23

grandfather the father or the mother (all that) shall not be taken from him (who possesses it) (he may keep) likewise property acquired by valour and the wealth of his wife

79 Those by whom clothes and the like articles have been declared indivisible have not decided properly The wealth of the rich depends on clothes and ornaments

80 (Such wealth) when withheld from partition will yield no profit, but neither can it be allotted to a single (coparcener) Therefore it has to be divided with some skill or else it would be useless

81 Clothes and ornaments are divided by (distributing the proceeds after) selling them a written bond (concerning a debt is divided) after recovering the sum lent prepared food (is divided) by an exchange for (an equal amount of) unprepared food

82 The water of a well or pool shall be drawn and used according to need A single female (slave) shall be (successively) set to work at their houses (by the several sharers) according to their shares (of the inheritance)

83 If there are many of them they shall be divided equally The same rule applies to male slaves as well Property obtained for a pious purpose shall be divided in equal shares

84 Fields and embankments shall be divided according to their several shares A common (road or) pasture ground shall be always used by the co heirs in due proportion to their several shares

79-84 Col Dig V 5 366 May pp 71 72 *Smṛitīk* (Iye) VII 41-43 &c The arrangement of these texts varies in the several works

85 The clothes, ornaments bed and the like as well as the vehicle and the like, appertaining to the father shall be given to the person who partakes of his funeral repast after honouring him with fragrant drugs and flowers

86 Such property whether immovable or other as has been given to women by their father in-law can never be taken away from them by the co heirs

87 Stridhana goes to the children and the daughter if not betrothed has a share in it If she is married she shall receive an honorary trifle only

88 The mother's sister the wife of a maternal uncle a paternal uncle's wife a father's sister a mother in law and an elder brother's wife are declared to be equal to a mother

89 If they have no legitimate son of the body nor (other) son nor daughter's son nor their son their sister's son &c shall inherit their property

90 A heinous crime (a claim regarding) immovable property a deposit and a previous partition among co heirs have to be ascertained by circumstantial evidence in default of documents and witnesses

91 A family feud, mutual malice, or the discovery of stolen goods may be evidence of a heinous crime possession of the land may be proof of property and separate property is an argument of partition

85 M I 4 17 May p 70 V p 250

86 V p 174 Smṛiti XI 1 44

87 Col Dig V 9, 487 D IV 2 3 Viv p 267 V p 2 9
The two first works read 'she does not take her mother's wealth for she shall receive an honorary trifle only

88 89 Col Dig V 9 513 D VI 3 31 May p 98 V p 243

90-92 Col Dig V, 6 389 D XIV 8

90 92 V p 261

92 Those who keep their income expenditure and mortgages distinct and engage in mutual transactions in money-lending and traffic are undoubtedly separate

93 Whether kinsmen are united or separate they are all alike as regards immovable property as no one of them has power in any case to give mortgage or sell it

94 95 Whatever share is enjoyed by each must not be changed from him If he should subsequently contest a distribution which was made with his own consent he shall be compelled by the king to content himself with his share and shall be punished if he should persist in contention

96 When the loan or mortgaging of joint property is concealed with a fraudulent purpose the king shall recover it from the cheat by artifice but not use violence to extort it from him

97 Cheats robbers of wealth crafty and covetous men shall be reclaimed by friendly expostulation by the loss of their own property or by stratagem

98 Household utensils beasts of burden and the like milch cattle ornaments, and workmen have to be divided on being discovered When property is (supposed to be) hidden proof by sacred libation is ordained

9 May p. 75 Viv p 313 Ratn p 608

93 M I 1 30 May p 76 V pp 87 158 D II 27 (Vasa) For kinsmen some works read coparceners or co heirs (dayādāt) The general meaning remains the same

94 95 Col Dig V 6 378 May p 76 V pp 258 259

96 97 Col Dig V 6 379 Ratn p 526

98 Smṛiti (Iyer) VI 11

99 When there are many uterine brothers sprung from one (father) and a son is born even to one of them only, they all are declared to have male offspring (through that son)

100 The same rule is declared for a plurality of wives of one (husband) if one of them has male issue, that (son) shall present the funeral ball of meal to them all

101 (For one leaving no male issue) a brother or brother's son or a *Sapinda* or a pupil should first perform the ceremony of uniting him with the *Sapindas* (to be worshipped at a *Śraddha* offering), and then offer him the funeral ceremonies customary on joyful occasions

XXVI GAMBLING AND BETTING

1 Gambling has been prohibited by Manu because it destroys truth, honesty and wealth. It has been permitted by other (legislators) when conducted so as to allow the king a share (of every stake)

2 It shall take place under the superintendence of keepers of gaming-houses as it serves the purpose of discovering thieves. The same rule has to be observed in bets on prize fights with animals

3 When birds, rams, deer or other (animals) are caused to fight against one another, after a wager has been laid, it is called betting on animals (*samāhvaya*)

99, 100 Ratn. p. 583, Varadarāga p. 27

101 Ratn. p. 600 Col Dig V 8 454

XXVI, 1 2 Viv p. 318, Vīram pp. 721 722 See Manu IX, 224

3 Viv p. 317 Ratn. p. 610

4 When any one is defeated in a prize fight between two animals the wager which has been laid shall be paid by the owner of the (defeated) animal

5 A wager (or game) shall be made in public false gamblers shall be banished

6 When there is a point at issue between the two parties (in a game or wager other) gamblers shall examine (and decide) the matter, if they are enemies (of either party) the king shall decide the dispute

7 One defeated in a secret game or ignorant of the rules, or (defeated) by the use of false dice or by deceit though acquainted with the game, shall be released and one who has lost his entire wealth in a game shall not be compelled to give the whole of it

8 The keeper of the gaming house shall receive the stakes and pay the victorious gambler and the king he shall also act as witness in a dispute assisted by three other gamblers

9 Those wicked men who use false dice in a game, or rob the king of his due or cheat by making false computations are declared to be gamblers deserving punishment

XXVII MISCELLANEOUS (Prakīrnaka)

1 This (aggregate of rules concerning) lawsuits instituted by litigants has been briefly declared I will declare (next the law concerning) Miscellaneous Causes instituted by the king (in person)

4 5 Viv p 318 Viram p 720

7-9 Ratn. pp 614-617

XXVII 1 Viram. p 722 Ratn. p 621

6 Viram p 720

2 In the case of a conflict between two Smṛtis (texts of law) equity should be resorted to when the law-books are inapplicable that course should be followed which is indicated by a consideration of the circumstances of the case

3 (However) the first rank (among legislators) belongs to Manu because he has embodied the essence of the Veda in his work that Smṛti (or text of law) which is opposed to the tenor of the laws of Manu is not approved

4 When he has discovered a man to be an offender (the king) should inflict (one of the various sorts of punishment) on him (gentle) admonition, (harsh) reproof or corporal chastisement, or one of the four gradations of fines

5 (Let him inflict) a (gentle) admonition, when the offence is very light (harsh) reproof for a crime in the first degree a fine for a crime in the (second or) middlemost degree and arrest in the case of high treason

6 Banishment also may be resorted to by (a king) desirous of promoting his own welfare in order to meet opposition, and all (the various) sorts (of punishment) should be united in the case of one who has committed a mortal sin

7 (The king) should punish elders, domestic priests and persons commanding respect, with (gentle) admonition only, other litigants he should amerce in a fine, when they are found to be guilty

2 Viram p 119

3 Col. Dig V 5 333 vedārthopanibaddhatvāt prādhānyam tu manoh smṛitam : manvarthaviparītā yā na sā smṛtiḥ prasasyate ||

4-7 Ratn. p 629

and on the perpetrators of a heavy crime he should inflict corporal punishment

8 (Gentle) admonition and (harsh) reproof are declared to be the privilege of the Brahman (appointed as chief judge) but both fines and corporal punishment may be inflicted by the king only

9 Both hands, both feet the male organ, the eye the tongue both ears the nose the neck one half of the feet the thumb and index, the forehead, the lips the hindpart and the hips

10 These fourteen places of punishment have been indicated For a Brahman, branding him on the forehead is ordained as the only kind of punishment

11 A Brahman, though a mortal sinner, shall not suffer capital punishment the king shall banish him and cause him to be branded and shaved

12 That man who deserves capital punishment shall be compelled to pay one hundred *Suvarṇas* one deserving to have a limb cut off, half as much and one deserving to have the thumb and index (cut off) half of that

13 The eighteen titles of law have been explained together with the particulars of plaint and answer Learn now (the law regarding) the relative validity of transactions

14. That transaction which has been prior in time (to another) shall be upheld If it is departed from, that is (called) an alteration of a transaction

15 If a creditor or debtor revokes a previous

agreement and makes another contract of the same description (in which a) greater or less (amount is stated), it is termed an alteration of a transaction

16 When (a debtor) having received a loan at the rate of two per cent (in the month) promises to pay five per cent that subsequent agreement is valid

17 Between two successive transactions the first is (rendered) void (by the second) a subsequent agreement prevails over the one preceding it in time

18 When a man first makes a deposit and converts it into a pledge afterwards after receiving money (for it) or sells it the second transaction prevails over the first

[19 Forbidden practices are found among the Southerners in the present day (such as) matches with a maternal uncle's daughter in spite of the prohibited degree of relationship on the mother's side (causing such unions to be illegal)

20 The highly reprehensible custom of a brother living with his deceased brother's wife and the delivery of a marriageable damsel to a family is found in other countries.

21 What is more, matches with a mother occur among the Parasikas The inhabitants of some countries do not allow the presentation of fresh gifts (of food) at a *Srâddha* offering to those Brahmans who have been fed at a *Srâddha* held on the eleventh

19-24 These texts will be published elsewhere They have been taken from the *Samskâra Kânda* of the *Smṛitīkandrikâ* where they are quoted from an uncertain author 20 has been printed as a text of *Br̥haspati* in Professor Bühler's *Uggrvalâ*, p 101 The term *Pârasikas* denotes the Persians, or perhaps the Parsis of India

day (after the decease of a person) or at some other
Sṛāddha

22 Others after lending grain take twice as much back in the autumn season and occupy the embanked land after having received twice the amount lent

23 Though the principal has been repaid This is reprehensible also Such forbidden practices (the king) should check (when they are resorted to) through folly

24 Such customs as are not opposed to the laws of particular countries and castes or other (corporations) every king should establish in accordance with the sacred law after consulting the law books]

25 Thus let the king every day examine in common with learned Brahmans both the suits proffered by litigants and those instituted by the king (himself)

26 When the safety of many may be effected by destroying a single offender his execution is productive of religious merit (even)

25 Ratn p 618

26 Smṛitiḥ ekasmin yatra nidhanam prāpīte dushātārāḥ | bahunām bhavati kshemas tasya puṇyaprado vadhaḥ ||

ADDENDA

P 231 Appendix v 56 This difficult text together with an additional text is quoted in a somewhat different but equally faulty form in the recently published last fasciculus of the Vivadaratnākara in the Bibliotheca Indica. I propose to render the two texts as follows. Fines beginning with a Kārshāpana may amount to four Kārshāpanas at most (in heavy cases) there are others beginning with two and rising to eight or beginning with three and rising to twelve Kārshāpanas. All those (fines) which have been declared to begin with one Kārshāpana may be raised to the fourfold amount: the same rule applies to the other fines as well, excepting the highest fine (which consists of 500 Panas).

P 369 *after* v 14 *add* 15 A wife should be honoured by her husband with (presents of) clothes ornaments and food and at a festival (she should receive similar presents) from her father and brothers her parents-in-law and other relations.

P 369 *after* note on vv 12-14 *add* 15 Smṛitē bhartrā patnī samabhyarṇāḥ vāstrāṇāṃ karabhoganaḥ | utsave tu pitṛibhrātṛiṣva surādyaḥ ka bandhubhiḥ ||